INTERIM STUDY COMMITTEE ON ECONOMIC DEVELOPMENT

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MEETING MINUTES[1]

Meeting Date:	**October 17, 2011**
Meeting Time:	**10:00 A.M.**
Meeting Place:	**State House, 200 W. Washington St., Room 431**
Meeting City:	**Indianapolis, Indiana**
Meeting Number:	**4**

Members Present: **Sen. Brandt Hershman, Co-Chairperson; Sen. James Arnold; Rep. Mark Messmer, Co-Chairperson; Rep. Scott Reske; Daniel Hasler; Art Evans; Mayor Shawna Girgis; Mark Becker; Jeff Quyle; Sonny Beck; Tom Easterday; Mickey Maurer; Chris Lowery; Nate Schnellenberger.**

Members Absent: **Angela Faulkner; Joe Breedlove.**

Senator Brandt Hershman called the meeting to order at 10:10 a.m.

John Krauss, Director, Indiana University Public Policy Institute, appeared with **Kathy Davis,** Co-Chair for the State and Local Tax Policy Commission and Owner of Davis Design Group LLC, and **David Lewis,** Co-Chair for the State and Local Tax Policy Commission and Vice President for Global Taxes & Chief Tax Executive, Eli Lilly and Company, to brief the Committee on some preliminary findings of the State and Local Tax

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[1] These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at http://www.in.gov/legislative Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of $0.15 per page and mailing costs will be charged for hard copies.

Policy Commission (Commission) in advance of the Commission's anticipated report on changes to Indiana's tax structure that are necessary to ensure long term fiscal sustainability, enable economic development, and promote the economic well-being of people in Indiana.

Mr. Lewis outlined the desirable features of a tax system:

- The guiding principle is that the tax system should allow businesses and individuals to prosper.
- Tax revenues must be adequate to meet the needs of the state.
- Tax revenues must provide for infrastructure with a long-term view.
- Tax revenues should be balanced among sources.
- Taxes should be broad based with low rates.

Ms. Davis pointed out some of the Commission's concerns. She acknowledged that current revenues are adequate: for state fiscal year 2012 [beginning July 1, 2011, and ending June 30, 2012], current revenue will equal current obligations, which puts Indiana at about second among states in the nation. However, the state does have potential issues to deal with:

- There has been an increase in the unfunded liability of the Teachers Retirement Fund (TRF) from $7.5 billion to $11 billion.
- Indiana owes $1.8 billion in unemployment compensation debt to the federal government.
- Property tax caps are settling in and there are some communities that are really scrambling to make ends meet.
- In the near term, there may be insufficient revenues to meet the needs for maintenance of infrastructure.
- Indiana is increasingly dependent on sales tax revenue.

Growth is the best strategy to solve these problems, she emphasized, and we should adopt a long-term view of our public needs and funding alternatives.

Mr. Lewis and Ms. Davis concluded their presentation with a several additional indications of the Commission's thinking:

- The Commission is continuing to debate whether there are elements of Indiana's tax code to tinker with.
- The General Assembly is to be commended for phasing in the reduction of the corporate tax rate.
- It is problematic if taxpayers who look similar have different tax rates.
- When you embrace a broad base and low rates, you have to be careful about evaluating credits and incentives. Tax incentives can create a lot of activity but it's difficult to know whether that activity is having a positive effect on growth. Once adopted, tax incentives can be difficult to take away.
- The Commission agrees that there should be continued focus on the recommendations of the Kernan-Sheperd report.

In the ensuing discussion, Mr. Lewis drew attention to the overall context in which state tax policy efforts take place:

- At the federal level, there is constant debate around corporate tax policy.
- The U.S. was a leader in the 1980s but the U.S. corporate tax rate is now among the highest in the world.
- The U.S. is one of the few countries to tax worldwide income.
- For most U.S. companies, the biggest opportunities are outside the U.S.
- The U.S. is falling behind in incentives for innovation.

Mr. Lewis continued. The question for Indiana becomes: where there is investment that will happen in the U.S., how do we compete for that investment? For businesses to grow, they need certainty. Federal tax policy leaves a business person in a state of uncertainty. One way Indiana can distinguish itself is to offer certainty in tax policy.

See Exhibit 1 for background on the Indiana University Public Policy Institute. See Exhibit 2 for a discussion of the Commission's efforts to improve economic well-being through tax policy.

Robert Greenbaum, Associate Professor, John Glenn School of Public Affairs, Ohio State University, appeared by video conference to speak on the topic of the effectiveness of business tax incentives. Professor Greenbaum explained that there are numerous justifications for providing local economic development incentives, which include:

- addressing market failures;
- addressing social goals;
- responding to changing economic conditions; and
- responding to incentive competition from other jurisdictions.

Professor Greenbaum related some observations about and from the academic research:

- The effectiveness of tax incentives is difficult to evaluate.
- An incentive can be well-targeted initially but may lose focus over time.
- Capital incentives can lead to increased output without creating jobs.
- Business activity increases about 2%-3% with each 10% reduction in taxes.

Professor Greenbaum himself conducts research in the area of enterprise zones, and he reviewed some of those findings, including the following:

- Incentives have no net effect for jobs or business establishment.
- Incentives have a negative impact on wages.
- Programs providing benefits more broadly (geographically) were less effective.
- Tying incentives to new jobs had some successes.

Professor Greenbaum asked--why are tax incentives still used? He gave two reasons:

- Tax competition is increasing among state and local governments. It is unlikely for any single state to eliminate business tax incentives unilaterally.
- Even if tax incentives are zero-sum in terms of job creation, there can be efficiency gains if job growth is shifted from lower to higher unemployment areas or the tax incentives address a market failure.

In conclusion, Professor Greenbaum offered several suggestions regarding business tax incentives:

- Be clear about policy goals.
- Make the process easy for businesses to navigate.
- Evaluate outcomes.
- Keep the geographic scope of a business tax incentive limited.

See Exhibit 3 for a copy of Professor Greenbaum's presentation.

Tom Lewandowski, President, Northeast Indiana Central Labor Council (NICLC), appeared to discuss the progress of the NICLC's Unemployed and Anxiously Employed Workers' Initiative (Initiative), along with **Cheryl Hitzemann,** leader of the Initiative's economic development audit team. Mr. Lewandowski and Ms. Hitzemann had previously appeared before the Committee on August 25, 2011.

Mr. Lewandowski reviewed the results of what he acknowledged was an unscientific survey of Initiative members conducted by the Initiative on the state of the local economy. Mr. Lewandowski then introduced the topic of the Initiative's economic development incentive audits, which are concerned mainly with property tax abatements conferred under IC 6-1.1-12.1. He described the following four problems the Initiative has encountered while conducting these audits:

- The term "job" is not defined.
- The term "payroll" is not defined.
- The instructions for completing compliance reports are extremely deficient. Consequently, taxpayers fill out reports as the taxpayers see fit.
- The compliance reports are not credible or verifiable.

Ms. Hitzemann described her impressions from analyzing statements of benefits required as part of the abatement application and compliance forms:

- Since "employee" is not defined, all kinds of employees are counted towards jobs claims.
- The compliance form does not have a way to separate different kinds of employees, for example: temporary full time, temporary part time, permanent full time, permanent part time, seasonal full time, seasonal part time. There is just one classification: employees.
- One firm is believed to hire temporary workers just before the form is due.
- Many examples of forms that are not even signed.
- There are examples of firms that move from, say, downtown Fort Wayne to a shovel ready site on the edge of town.

She said that other business people who do not receive abatements are offended because they see incentives being given to people who may not deserve them.

Mr. Lewandowski concluded by asking that the General Assembly address the four problems he described at the outset of his testimony.

Mr. Lewandowski distributed the following documents to the Committee:

- Exhibit 4: Initiative Survey Results
- Exhibit 5: Initiative Survey
- Exhibit 6: Questions 28, 29, and 30 Initiative Survey Responses
- Exhibit 7: Shawgo, The Journal Gazette, "Study: Local incomes slip as economy shifts" (June 8, 2011 3:00 p.m.)
- Exhibit 8: Allen County 2005 Tax Abatements
- Exhibit 9: Fort Wayne 2005 Tax Abatements
- Exhibit 10: Abatement BB
- Exhibit 11: Abatement P

Ron Brumbarger, President and CEO, BitWise Solutions, Inc. (BitWise), spoke on the topic of entrepreneurship, relating some of his experiences with hiring people to work at BitWise and attempting to support education. His company is about twenty years old and has about twenty employees. BitWise is located in Carmel, Indiana.

Mr. Brumbarger said he has struggled with hiring motivated, skilled people. He noted that he can train a person to become skilled, so he's looking for passionate people. He was once passionate about hiring new grads but now he's come to the conclusion they're not ready. He believes there's an absence of work ethic. He's encountered a fallacy where a new grad believes he will hire at a $70,000 salary. Out of this frustration, he now has a division of the firm dedicated to hiring high school students.

Senator Hershman brought up the mandate in HEA 1006-2011 to develop curriculum guides for instruction in entrepreneurship. He asked Mr. Brumbarger for his opinion about that. Mr. Brumbarger said that about five years ago he got very involved in education, buying textbooks and funding curricula. But those programs have been dropped for lack of interest.

Mr. Brumbarger finished with comments on his interviewing practice. He said that over the past five years, he has ceased asking a candidate where he or she went to college. In his opinion, a college degree doesn't matter. His top three developers, he continued, don't have a college degree--but it doesn't matter. He asked rhetorically what happens if we cease caring about a college degree. His biggest concern, he concluded, is the difference between those who have an entrepreneurial mind set and those who don't.

Jason Dudich, Associate Commissioner and Chief Financial Officer, Indiana Commission for Higher Education, appeared with **Amy Horton,** Assistant Superintendent for Student Achievement and Growth, Indiana Department of Education, and reported that the development of the entrepreneurial curricula guides was in its early stages. Senator Hershman reminded Mr. Dudich and Ms. Horton that this issue is important and we will work on this collaboratively.

Representative Scott Reske spoke on the topic of regional collaboration in the Midwest. He said there is a new initiative in the Council of State Governments -- Midwest Region (CSG-M) to establish a collaborative economic development organization for the Midwest, similar to the role the Southern Growth Policy Board has played in the South.

Representative Reske emphasized that a collaborative Midwest economic development organization would undertake action in those areas where the states could find agreement and would avoid any attempt to work on areas where there is conflict between one or more states.

Representative Reske added that one piece of advice he received from the people involved with the Southern Growth Policy Board was to avoid a formal state compact structure and use a less formal mechanism.

Finally, Representative Reske recommended that Indiana participate in any regional Midwest economic development organization that comes out of the talks currently under way at CSG-M.

Senator James Merritt introduced the topic of unfair practice laws and stolen information technology, which was placed on the agenda of the Committee as the result of Senate Resolution 57-2011, authored by Senator Merritt. He said the resolution called attention to two issues:

- First, the resolution recognized that businesses cut costs by using stolen intellectual property.
- Second, the resolution acknowledges that some businesses are injured when competitors use stolen intellectual property.

Heather Macek, Attorney, Barnes & Thornburg, LLP, representing Microsoft, introduced **Greg McCurdy,** Sr. Policy Counsel at Microsoft, who gave a presentation titled "FAIR Competition, IP Protection, & JOBS".

Microsoft's interest in the topic is to find a way to stop piracy of its products. Mr. McCurdy said Microsoft has been working at the state level for several years because federal and international law is not helpful. Microsoft's strategy therefore is to encourage states to adopt unfair competition laws that, for example, would allow an Indiana manufacturer to sue a competitor in Indiana who uses products made by a manufacturer that uses stolen intellectual property in its business. Thus, if an Indiana competitor who imports parts made by a Chinese manufacturer who uses stolen intellectual property in the Chinese manufacturer's business, the imported parts may cost less than they otherwise would and the Indiana competitor could be held liable for an unfair trade practice. An injured claimant could obtain both damages from and an injunction against the competitor. Mr. McCurdy described the terms of statutes along these lines that have been adopted in the states of Washington (2011) and Louisiana (2010).

The point, Mr. McCurdy concluded, is to provide incentives to companies overseas to license products and, also, that importers should be subject to penalties for importing products from the thieves of stolen intellectual property.

See Exhibit 12 for a copy of Mr. McCurdy's presentation.

Morgan Reed, Executive Director, Association for Competitive Technology, continued on the topic of unfair practice laws and stolen intellectual property.

Mr. Reed gave a tangible example of the problem by setting two valves on the table, one made in China, the other made in the United States. He then stacked a dozen or so software packages behind the valve made in the United States and gave a rough estimate of what the United States firm would have had to spend on that software. Finally, he claimed that the Chinese manufacturer is using all the same software but the Chinese manufacturer on the other hand pays nothing.

Mr. Reed explained that his members were smaller firms and could not go to international forums to seek justice. Therefore, he advocates the adoption of an unfair practice law of the type described by Mr. McCurdy.

Brian O'Connell, Regional Director, State Government Relations, General Motors (GM), was the final speaker on the topic of unfair practice laws and stolen intellectual property. He took a position opposing the adoption of an unfair practice law such as the one described by Mr. McCurdy.

Mr. O'Connell said that GM appreciates what this tactic is trying to do. But unfair practice statutes like the ones in Washington or Louisiana have the potential to disrupt the supply chain in Indiana. He explained that GM uses approximately 330 suppliers in Indiana. In addition, GM has over 6500 employees in Indiana. Consequently, the adoption of this kind of statute could mean the loss of jobs in Indiana.

Mr. O'Connell further described the difficult position such a statute would place a company like GM in. He gave an example: suppose GM is getting certain parts from a tier 1 supplier. This tier 1 supplier could then contract for certain subcomponents. And so on. An unfair practice law would make GM liable for every intellectual property violation of every contractor in the supply chain. In addition, under this proposal, a claimant could get an injunction to shut down the GM supply chain. If that were to happen, GM's plant in Fort Wayne would shut down.

Mr. O'Connell concluded by saying that passing laws in Indiana to stop a company from pirating software in southeast Asia is not the answer.

See Exhibit 13 for a copy of Mr. O'Connell's written testimony. See also Exhibit 14, an open letter to the Committee (opposing anti-piracy legislation), and Exhibit 15, Kassinger and Hacker, O'Melveny & Myers LLP, memorandum to the Technology CEO Council (2011) (describing legal defects of anti-piracy legislation).

Senator Hershman informed the members that there is a final meeting on October 24th to adopt a final report. He urged the members to get their proposed findings and recommendations to him in the next few days.

Senator Hershman adjourned the meeting at 2:26 p.m.

ICED
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EX 1

INDIANA UNIVERSITY PUBLIC POLICY INSTITUTE

The IU Public Policy Institute is a collaborative, multidisciplinary research institute within the Indiana University School of Public and Environmental Affairs. The Institute serves as an umbrella organization for research centers affiliated with SPEA, including the Center for Urban Policy and the Environment and the Center for Criminal Justice Research. The Institute also supports the **Office of International Community Development** and the **Indiana Advisory Commission on Intergovernmental Relations (IACIR).**

The Center for Urban Policy and the Environment is devoted to supporting economic success for Indiana and a high quality of life for all Hoosiers. An applied research organization, CUPE was created by the Indiana University School of Public and Environmental Affairs in 1992. The Center works in partnership with community leaders, business and civic organizations, nonprofits, and government. CUPE's work is focused on urban policy, intergovernmental cooperation, community and economic development, housing, environmental issues, and fiscal affairs research essential to developing strategies to strengthen Indiana's economy and quality of life.

The Center for Criminal Justice Research works with public safety agencies and social services organizations to provide impartial applied research on criminal justice and public safety issues. CCJR provides analysis, evaluation, and assistance to criminal justice agencies; and community information and education on public safety questions.

Created in 2008 by the Indiana University School of Public and Environmental Affairs, CCJR faculty and staff have worked with SPEA and the Center for Urban Policy and the Environment on criminal justice and public safety research projects dating back to 1992. Some of the issues CCJR addresses include crime prevention, criminal justice systems, policing, traffic safety, and youth.

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ICED
OCT 17, 2011
EX 2

October 17, 2011

Indiana University Public Policy Institute

Policy Choices for Indiana's Future

State and Local Tax Policy Commission

Topic:

Discussion of efforts by the State and Local Tax Policy Commission to improve economic well-being through tax policy

Presented to:

Interim Study Committee on Economic Development

Presented by:

John Krauss, Director, IU Public Policy Institute

Kathy Davis, Co-Chair for the State and Local Tax Policy Commission
Owner, Davis Design Group LLC

David Lewis, Co-Chair for the State and Local Tax Policy Commission
Vice President for Global Taxes & Chief Tax Executive, Eli Lilly and Company

Prepared by:

Matt Nagle, Senior Policy Analyst, IU Public Policy Institute

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I. INTRODUCTION

a. Scope and intent of work

Initiated by Indiana University's School of Public and Environmental Affairs and the IU Public Policy Institute, a group of experts in state and local tax policy agreed to serve on the Commission on State and Local Tax Policy (hereafter, the Commission). The charge of the Commission was to identify and propose changes to Indiana's tax structure that ensure long term fiscal sustainability, enable economic development, and promote the economic well-being for the state. While federal policies greatly influence what policy choices are available to the states, the Commission focused on what Indiana's policy leaders can control at the state and local level. The Commission sought to create a comprehensive set of reforms that encourage simplicity, transparency, efficiency, economic competitiveness, and sustainability in tax policy.

b. Membership

The Commission is diverse demographically, in geographic representation, and in perspectives on how best to modernize our system of taxation and spending. All members have extensive budgeting experience and understand the challenges facing Indiana. Its combined expertise in state and local finance and in the private sector provides a wealth of knowledge and insight about the challenges and potential solutions to state and local tax policy in Indiana.

The Commission co-chairs are:

- **Kathy Davis**, Owner, Davis Design Group LLC
- **David Lewis**, Vice President for Global Taxes & Chief Tax Executive, Eli Lilly

Other members of the commission are:

- **David Bennett**, Executive Director, Community Foundation of Greater Fort Wayne
- **Jean Blackwell**, Executive Vice-President, Corporate Responsibility, Cummins Inc., CEO Cummins Foundation
- **Gretchen Gutman**, Associate Vice President, Government Relations, Ball State University
- **Matt Hall**, Director, Projects and Finance, BioCrossroads
- **Craig Johnson**, Associate Professor, School for Public and Environmental Affairs, Indiana University
- **Mike Norris**, Vice President of Global Taxes, Zimmer Corporation
- **Chuck Schalliol**, Counsel, Baker Daniels
- **Jim Steele**, CFO City-County Council, City of Anderson

- **Bill Waltz**, Vice President, Taxation & Public Finance, Indiana Chamber of Commerce
- **Kurt Zorn**, Professor and Associate Vice Provost for Undergraduate Education, Indiana University

The Commission was staffed by the Indiana University Public Policy Institute (PPI), a research organization that is part of the IU School of Public and Environmental Affairs. Commission costs were underwritten by the IU School of Public and Environmental Affairs, located at the Bloomington and Indianapolis campuses, and the Central Indiana Corporate Partnership.

c. Guiding Principles

Good policy requires specific goals, understanding of our strengths, weaknesses, threats, and opportunities, intentional decision making, and continual evaluation of results. The ability to deliver sound tax policy for Indiana rests in part on the ability of its tax system to operate fairly, professionally, and consistently. The system must also deliver proceeds to invest in key assets (such as roads, bridges, sewers, broadband infrastructure) and services (such as education, health services, and public safety) to make Indiana a desirable destination for individuals and businesses.

The Commission supports a tax system that does the following:

- Enables economic growth, business and individual well being
- Takes a balanced approach to taxation with broad bases and low rates
- Emphasizes a long-term and comprehensive strategy for infrastructure preservation and enhancement
- Creates consistency, clarity, and effectiveness through a purposeful structure and operation of state and local government
- Recognizes regional differences in approaches to economic growth

In this pursuit, the Commission's report reflects a comprehensive and integrated approach to tax policy. Accomplishing these steps requires a concerted effort by state and local leadership. Indiana's economy and the lives of its citizens have changed in fundamental ways since our jurisdictional boundaries and methods for taxation were initially developed. Indiana's system of taxing and spending needs to adapt.

In addition, the Commission supports consistency in its treatment and expectations of businesses and individuals as a precursor to economic growth.

d. Timeline

The Commission is finishing its research and report writing duties and expects to release its findings and proposals in early 2012.

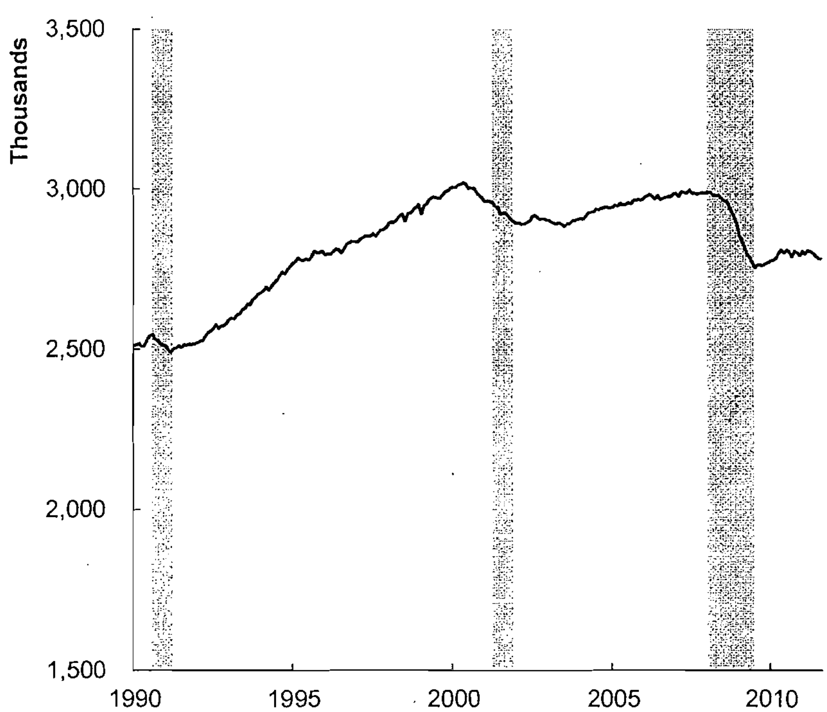
II. CHALLENGES FACING THE STATE

a. Economic recovery

The last decade presented major challenges for Indiana's economy and long term prospects for growth. Indiana lost 250,000 of 3.1 million total jobs between 2008 and 2011. Adjusted for inflation, Indiana personal income grew by 4 percent since 2000, compared to 14 percent for the nation. The economic recovery from the most recent recession has been constrained by people paying off debts instead of spending; household debt as a percent of income grew 11 percent from 2000 to 2008 but has dropped 15 percent since.

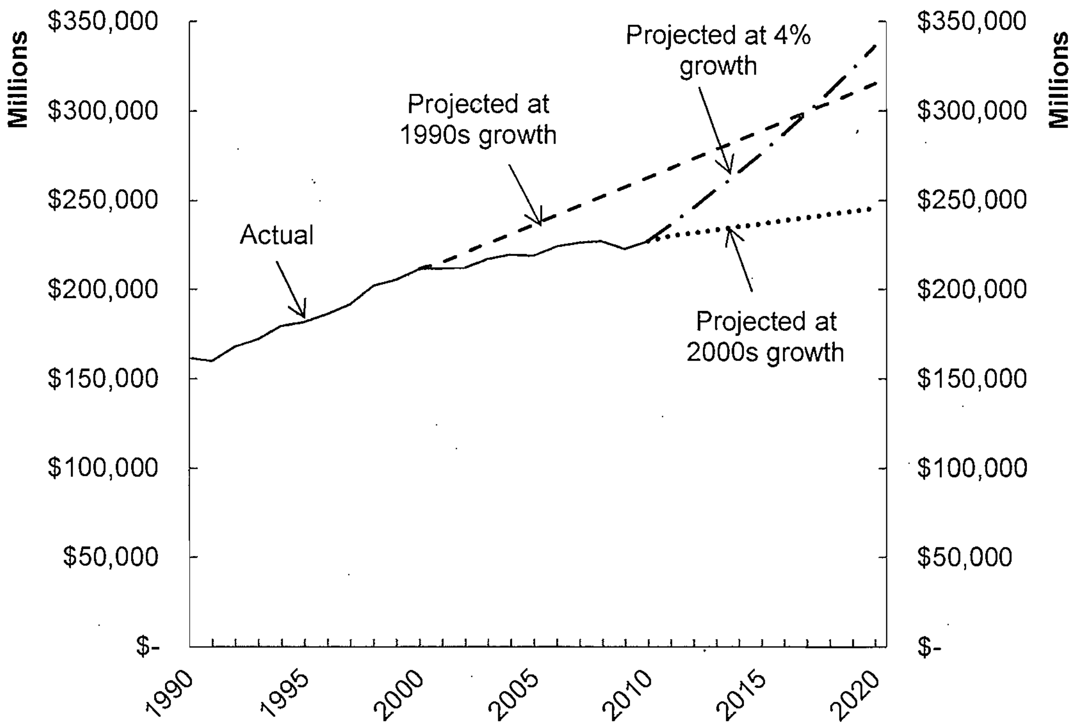
A larger share of jobs has been lost, some permanently, with the 2008-09 recession as compared to previous recessions (Figure 1). A lack of sustained growth in income and in key economic sectors has compounding effects both in terms of government revenues and economic vitality; specifically, in constrained personal income, consumption, investments, and new construction of homes. This also means less investment in improvements to homes and property (as well as stagnant investment in business property), so that assessed valuations of Indiana property will likely grow slower than otherwise.

Figure 1.
Indiana Monthly Non-Farm Payrolls
Source: US Bureau of Labor Statistics



State forecasts predict personal income growth on the order of about four percent annually over the next two to three years. This rate exceeds the growth over the last decade (Figure 2). Estimates of personal income growth depend heavily on economic conditions, so a sustained period of economic expansion and jobs creation will need to occur to continue the growth pattern of the last 18 months. The impact of the recession on personal income will continue to manifest itself in local government revenue growth.

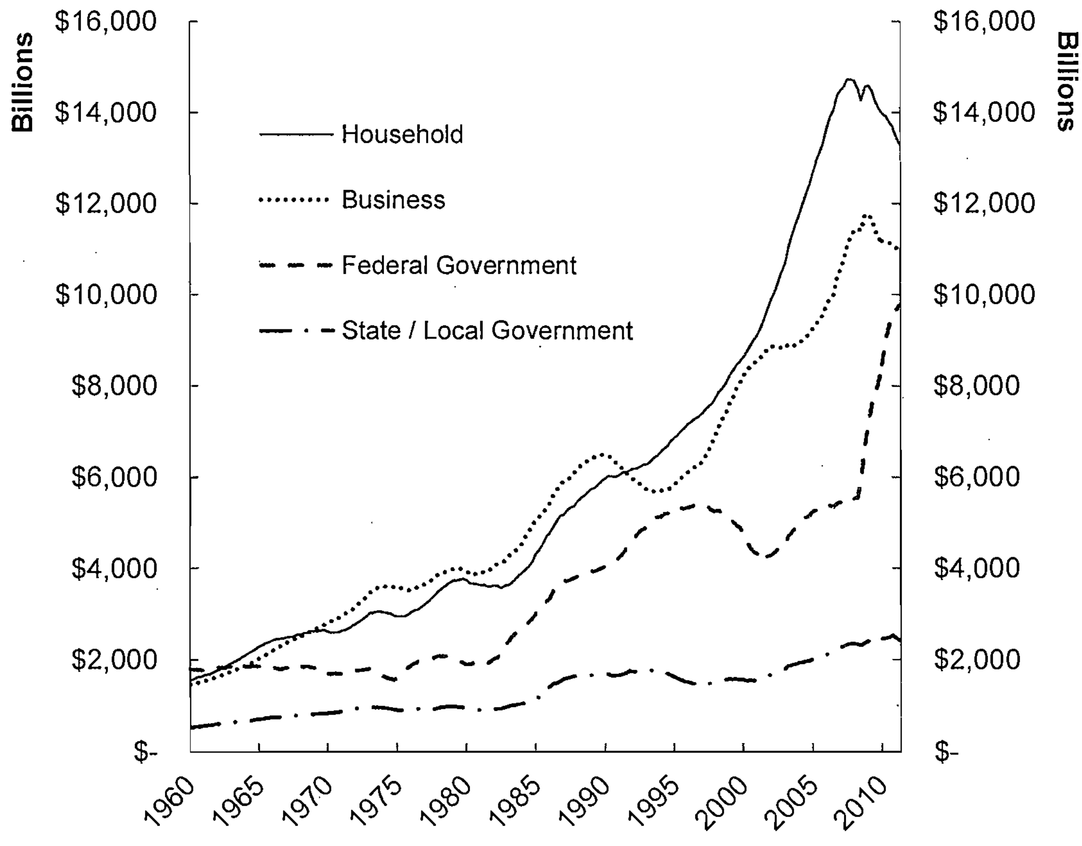
Figure 2.
Indiana personal income, adjusted for inflation
Source: US Bureau of Labor Statistics, US Bureau of Economic Analysis



As with nearly all sectors of the economy, American households accumulated large amounts of debt over the last decade. Since the recession of 2008, these households have undertaken a large-scale process of de-leveraging (Figure 3). People have constrained their spending habits so that they can pay off debts and regain a solid financial footing.

De-leveraging on this level has decreased prospects for economic expansion because less consumer spending means lower expectations and more uncertainty for businesses. Constrained final demand for private goods and services has caused businesses to refrain from investments and from hiring new workers. Ultimately, while these circumstances are putting citizens in a better fiscal situation, they present challenges for state governments that rely on sales taxes and other consumption-related revenues to fund services.

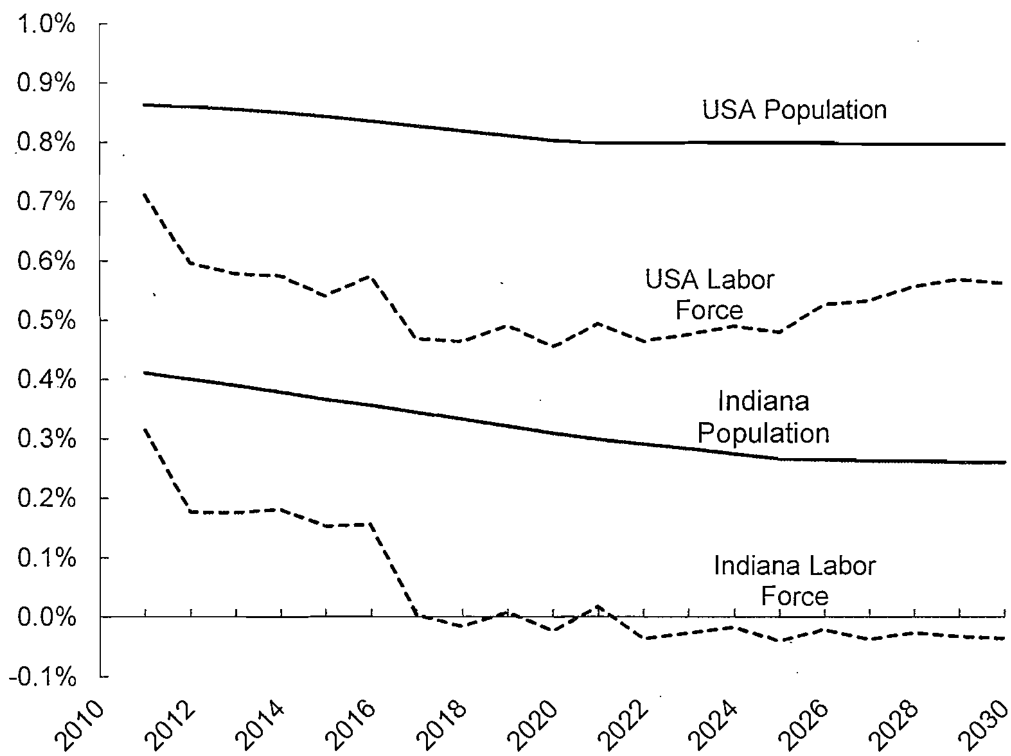
Figure 3.
Quarterly Debt Outstanding, by Sector
Source: Board of Governors of the Federal Reserve System



b. Demographic shifts

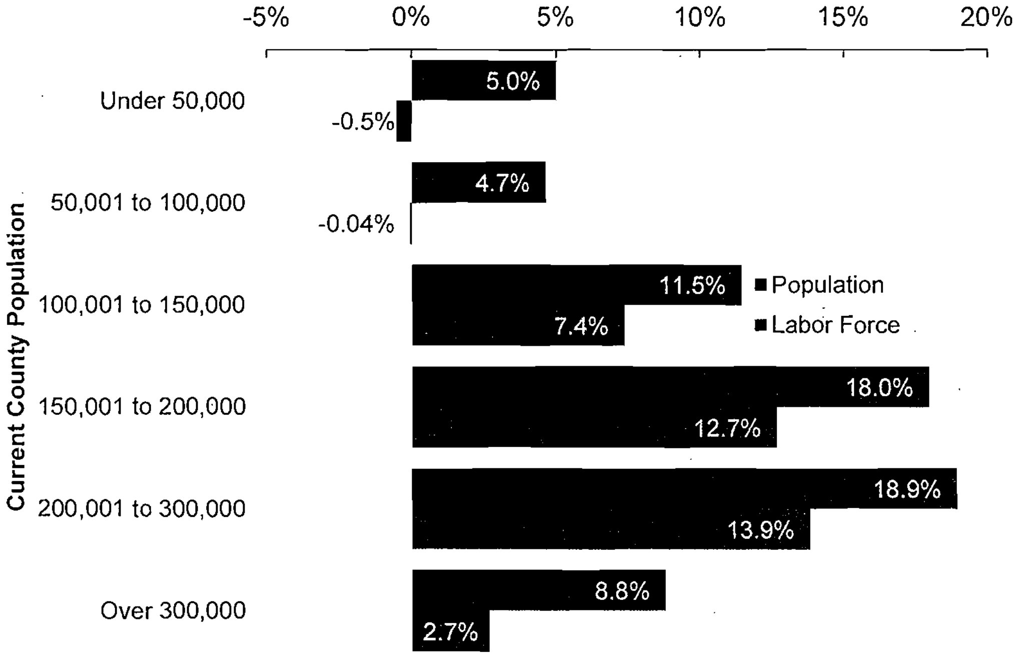
As the baby-boom generation reaches retirement age, the result is fewer people in the workforce, less potential for robust growth in personal income, and less revenue from the individual income tax. While the national labor force is expected to grow 10 percent over the next 20 years, Indiana's will only grow by 1 percent (Figure 4). In other words, there will be a larger share of retirees relying on fewer working people to drive the economy that ultimately supports them. These retirees will consume different services than younger generations, many of which go untaxed. Spending on health services, retirement programs, and Medicaid, are likely to increase as our population ages.

Figure 4.
Projected Annual Percent Growth in Population and Labor Force, 2010 - 2030
Sources: US Bureau of Labor Statistics, US Census Bureau



About two-thirds of Indiana counties have seen flat growth in population (Figure 5). In rural areas, we can expect the labor force to be smaller in 20 years than it is now. Urban areas will have a greater ability to compete for 21st century jobs, which are focused in science, technology, engineering, and mathematics (STEM) fields, than will rural Indiana. Ultimately, strategies for economic development and long-term growth need to recognize that different areas have different needs, assets, and opportunities for growth. Rural areas may need to consider more growth-from-within strategies that foster business development and innovations by people that are there for the long term.

Figure 5.
Projected Total Percent Growth
in Population and Labor Force, 2010 - 2030
Sources: US Bureau of Labor Statistics, US Census Bureau



c. Federal outlook

Our federal government's fiscal situation and its corresponding actions have and could continue to have a significant impact on Indiana's future. Deficit-driven federal reforms to spending on infrastructure, entitlement programs, and health services could have significant effects on Indiana's fiscal position. In addition, corporate taxation at the federal level presents challenges in attracting business investment and retaining global-economy industries in the country.

For example, the United States now has the second-highest corporate tax rate across OECD member countries. In addition, the US is one of very industrialized countries to impose taxation on the foreign earnings of home-domiciled global companies. Finally, the US is falling behind in incentives that encourage innovation. These significant disparities undermine the competitiveness of U.S.-headquartered firms and contribute to the decline in U.S. manufacturing employment.

d. State outlook

Property tax reform, increases in the state sales tax rate, and corporate tax restructuring have altered the mix of revenue, in that government now relies more on income and consumption tax bases. Local governments have been particularly hard-hit. Revenue losses from property tax caps and stagnant growth in local income taxes are forcing local leaders to explore cost-cutting and reduction in services.

Indiana owes the federal government over $1.8 billion for unemployment benefits, with interest on that debt being paid now. The unfunded liability of Indiana teacher pensions has grown from $7.5 billion in 2000 to $11 billion in 2010.

In addition, infrastructure investment is necessary, and the money to fund the preservation and enhancement of our infrastructure is shrinking. The Major Moves lease proceeds are nearly spent and the state is without an adequate replacement of those funds. State and local needs are in excess of $1 billion just to maintain the current road system.

At the same time that the state must deal with infrastructure needs, the structure of local government likewise requires corrective action. Principles-based restructuring of local government is necessary, and if done well, could deliver resources to address other needs.

Concerted efforts at maintaining fiscal health through the financial crisis and resulting economic downturn enables Indiana to have policy options about the future of public finance in Indiana. The state government is in a relatively strong position in the short term, with revenues sufficient to cover budgeted costs through FY 2013.

e. Infrastructure

Indiana, like the rest of the nation, faces a serious challenge in maintaining and enhancing its core assets to promote growth and attract people to live here. A well-maintained and comprehensive network of roads, bridges, sewers, utilities, and high speed internet access goes a long way toward defining the quality of life and quality of economy.

In the case of roads, much of Indiana's road network has surpassed its useful life span of 30 years and is in need of immediate repair. Indiana faces significant shortfalls in funding needed to meet current road needs. State Motor Vehicle Highway Funds have decreased due to less driving and the increased use of fuel efficient vehicles. The upcoming state budget has distributed less for highway programs than in previous years. In addition, the Major Moves Toll Lease proceeds are expected to have been spent by the end of FY13.

Along with these trends, potential and perhaps likely cuts in federal funds mean little to no additional capacity for new projects, and insufficient funding for the preservation of our current system. At the local level, recent estimates on local road needs show a $5.4 billion backlog on short-term projects (Table 1).

Table 1.
Local Transportation Funding Shortfalls
Source: Indiana Local Technical Assistance Program Center (2009)

(In millions $)	Short term (backlog)	Long term (annual)
Roads and streets	$ 3,504	$ 715
Bridges and culverts	$ 1,169	$ 117
Safety Improvements	$ 706	$ 26
Total	$ 5,379	$ 858

III. FOCUS AREAS OF THE COMMISSION

While government does not *create* economic growth, it can *encourage* growth through its many roles and decisions. The Commission's proposals attempt to better orient our government to enable real growth in the economy and in the well-being of Indiana's citizens.

Other commissions of the *Policy Choices* project address and propose changes for Indiana's education and workforce development programs and for energy and environmental policy. The Tax Commission's efforts are directed at proposing enhancements to Indiana's tax system that encourage business development and investment, that orient the structure of government toward best serving citizens and businesses, and that provide funding mechanisms for investments in infrastructure and other key assets for Indiana.

The most effective means of raising revenue for public services is through a balanced and diversified portfolio of revenues drawn from the tax bases of income, consumption, and property. Taxation must be clear and methods certain. Certainty promotes confident decision making for an economic recovery.

The Commission believes that the most effective way of positioning Indiana for success in the future is through targeted enhancements in three areas:

(1) Preserving an attractive business climate
(2) Designing a government structure to enable a 21st century growth economy
(3) Funding necessary maintenance and enhancement of our infrastructure

The Commission will release its report in early 2012 with the intent of informing the debate about how best to administer tax policy for Indiana's economy and for its citizens.

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IV. TAX EXPENDITURES

The Commission's report contains several proposals aimed clarifying the role that tax expenditures should play in state tax policy. It is the general position of the Commission that while incentives, deductions, and exemptions can and do work in certain cases, Indiana should know more than it does about the economic benefit (or cost) created. Indiana tax policy should be data-driven and strategic in decision making, especially in challenging economic times.

Recent estimates by the Indiana Legislative Services Agency show that nearly $200 million in tax credits are claimed annually by individuals and corporations. These claims against tax liability represent more than just revenues foregone for funding government – they complicate the tax code, forcing the need for higher tax rates, and creating inequalities in tax treatment among entities that are otherwise similar. From the perspective of good tax policy, Indiana should have reason to treat similar individuals or corporations in different manners. While some credits such as the Earned Income Credit are desirable for tax progressivity and others such as the Research Expense Credit have shown positive returns, the benefits of other credits and deductions is not as clear.

The Commission does not oppose tax expenditures as an economic development tool, but rather advocates a cost/benefit approach in all cases. The effectiveness of the system of tax expenditures should be evaluated periodically and done so professionally and comprehensively. The goal is to ascertain if, for each credit and deduction, the cost in foregone revenues is exceeded by the benefit in jobs created and private investments made. Further, Indiana policy should compare the effectiveness of incentives against direct grants to incentivize desired behaviors.

The Commission recognizes that this is an extremely subjective and difficult task, but a focus on the circumstances in which the credits are claimed and whether an investment was likely regardless of the credit is necessary to ensure that money collected from the public is being used wisely.

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OCT 17, 2011
EX 3

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Effectiveness of Business Tax Incentives

Presentation to the Indiana General Assembly
Interim Study Committee on Economic Development
October 17, 2011

Robert T. Greenbaum
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Outline

- Background/theory
- General findings from academic research
- Some findings from my EZ evaluations
- Some suggestions from the literature

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Background

- Numerous justifications for providing local economic development incentives (efficiency and equity arguments)
  - Address market failures
    - Labor immobility, wage rigidity, imperfect information, negative externalities
  - Address social goals
    - Increased concentration of poverty, revitalize communities
  - Respond to changing economic conditions
    - Deindustrialization, trade
  - Respond to incentive competition from other jurisdictions

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Some theory

- Are incentives just zero sum?
  - Yes
    - May just move around the same activity
    - Could be worse than zero-sum fiscally if
      - New jobs would have occurred anyway
      - Many of the new jobs go to in-migrants
      - Incentives are front-loaded and firms don't stay
  - No
    - Can lead to efficiency gains even if job growth is indeed zero sum if
      - Activity is shifted to high unemployment areas
      - Market failures are ameliorated

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Recent trends

- Have been various popular approaches over time
  - Economic base theory, urban dynamics approach, industrial targeting, clusters, income density, creative class
- Typical federal, state, and local incentives include
  - Tax incentives, tax abatements, non-tax discretionary incentives, enterprise zones, industrial revenue bonds, tax increment financing, marketing, training (employee and entrepreneurial), research centers, export assistance, tax reform
- Likely that fiscal competition is increasing
  - Reduced transportation costs, vertical disintegration, site selection consultants, politics

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Academic Research

- Evaluation of the effectiveness of incentives is difficult
  - Must establish the counter-factual
  - Many studies only account for the presence or absence of a program rather than program features
  - Just because a program creates jobs does not mean it is a success
    - Did it improve the lot of the location population
    - Is it cost-effective?
  - Results from multiple studies have different findings
    - Different methods, places, times

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Be Critical Consumers of the Research

- Does it account for other factors that may drive the findings?
- Does it rely on interviews or surveys with "interested parties"?
- Is it based only on *ex ante* multiplier analysis?
- Were benefits weighed against costs?
- Are the results sustainable? Consider
  - Reaction from "competition"
  - Will businesses remain after incentives expire?
- Are the findings "too good to believe"?

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Other Concerns about Tax Incentives

- Even if initially well-targeted, can lose focus over time
  - Political spread to economically-unjustified places
    - Allure of "justified" places reduced
  - Even if limited to "economically-justified" places, resources become too thinned out
  - Some evidence that TIFs were more effective in Indiana earlier on, when there were fewer of them (Chang, 2001)
- Capital incentives can lead to increased output without creating jobs

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Findings from Academic Research

- The good news
  - Elasticities of economic activity with respect to business taxes is around -0.2 to -0.3
    - 10% lower taxes leads to 2-3% increased activity
- The bad news
  - Incentives work best where they are the least useful – locally
  - Benefits are often smaller than touted
  - Jobs created may not be high paying

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Some of my findings from EZ research

- Incentives targeted to existing/declining industries
- No net effect for jobs or business establishments
- Negative impact on wages
- Some positive impacts generating new establishments offset by losses among existing establishments
- Programs providing benefits more broadly (geographically) were less effective
- Some benefits of involving local officials in planning process
- Programs more effective in increasing housing values in less-distressed cities
- Tying incentives to new jobs created had some successes

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Findings from academic research

- More bad news
  - Often, the fiscal costs outweigh the benefits
    - Many of the jobs "created" would have been created without the incentives
    - Many of the jobs that are created go to in-migrants
      - Doesn't directly help the local population
      - Are costly in terms of new services that need to be provided
  - Is an opportunity cost to tax incentives ("tax expenditures")
    - Increased taxes on others
    - Reduced expenditures on potentially useful services

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Why are tax incentives still used?

- Unlikely for any single state to unilaterally eliminate business tax incentives. Tax competition seems to be increasing among state and local governments
  - Given that, how should a state best implement its incentive policies?
- Theory argues that, even if incentives are zero-sum in terms of job creation, there can be efficiency gains if job growth is shifted from lower to higher unemployment areas and/or market failures are addressed

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Some suggestions

- Be clear about policy goals
- Make the process easy for businesses to navigate
- Evaluate outcomes
  - Does the implemented program still meet program goals?
  - Look beyond jobs to social welfare outcomes
  - Use experimental or quasi-experimental methods to attempt to establish the counterfactual
- Keep the geographic scope limited
  - Helps for more intensive marketing, allows designation of areas with strongest local support, facilitates closer program monitoring and evaluation, prevents incentive dilution

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Final Suggestions

- Become aware of the relevant academic literature
- Build connections and engage with academic researchers
- Be critical consumers of the research!

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Suggestions from the literature

- Workforce development (education/training)
- Make cities attractive for mobile workers
- Focus on emerging industries such as high tech with "good" jobs or on creative industries
- Promote regionalism and cooperation
- Encourage local revenue sharing
- Build on key anchor institutions
- Target distress

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Suggestions from the literature

- Encourage entrepreneurship and innovation
  - Promote self employment and small businesses
- Focus strategically on existing strengths within the state
- Promote collaboration among government, universities, non-profits, and businesses
- To measure success, focus on outcomes other than jobs
  - Social welfare outcomes

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EX 4

Unemployed and Anxiously Employed Workers' Initiative Survey Results

Survey Introduction

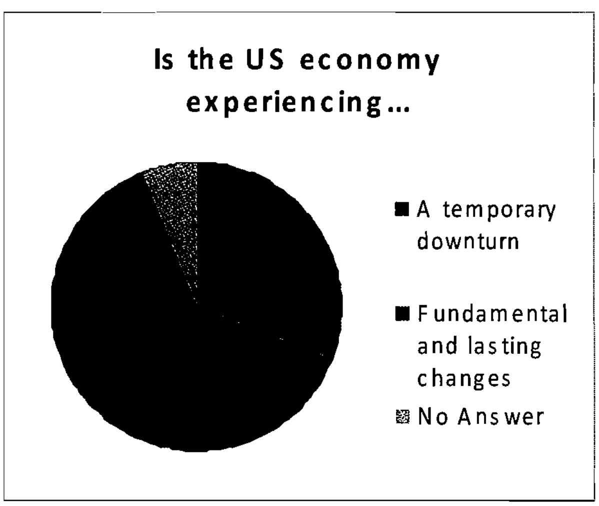
The Unemployed and Anxiously Employed Workers' Initiative created and conducted a survey of their membership in order to understand how their members felt about the state of the economy, how the economy has impacted their job and their household, their outlook for economic recovery, unemployment services, and their level of satisfaction with various levels of government policy that have been implemented to encourage job development.

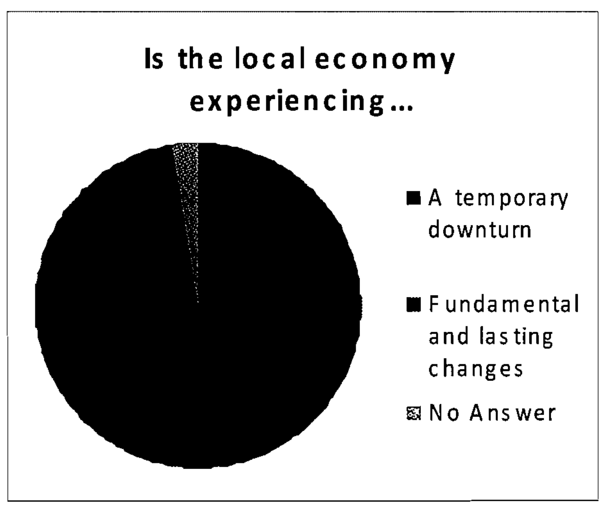
Members of the unemployed and anxiously employed developed the survey based on similar surveys that have been created and through input from several members. Members distributed paper copies of the survey to other members to complete at various union and other organizational meetings, through their personal network with other members, and at the Labor Day picnic held at Headwaters Park in Fort Wayne, Indiana. Surveys were completed during the late summer and fall of 2010. One hundred and sixty-five members completed the survey, which is approximately twenty-five percent of the Unemployed and Anxiously Employed Workers Initiative membership. The age range of the respondents was between fifteen years of age to eighty years old with a normal distribution across the range. Fifty-three percent of the respondents were male and forty-seven percent were female.

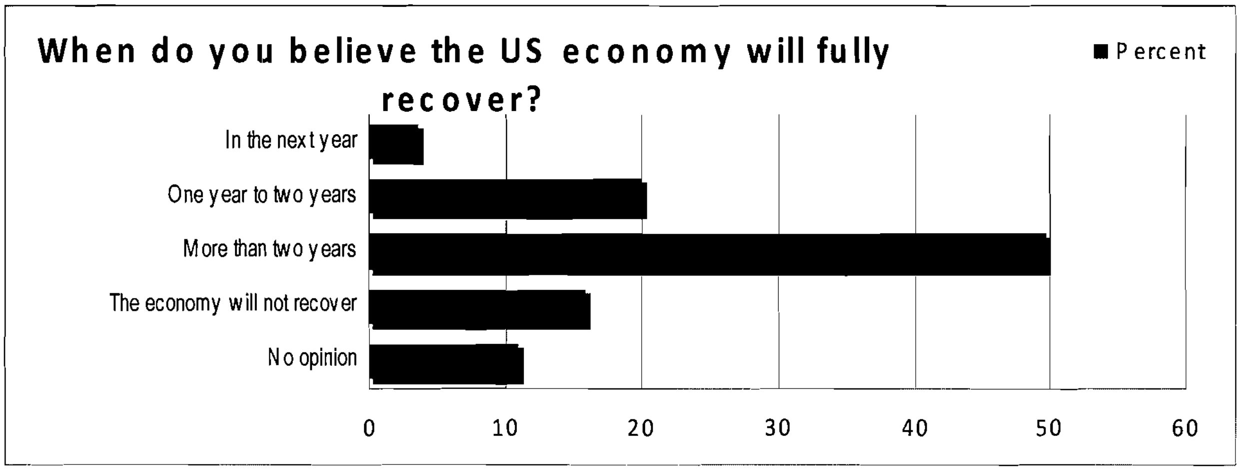
Survey Results

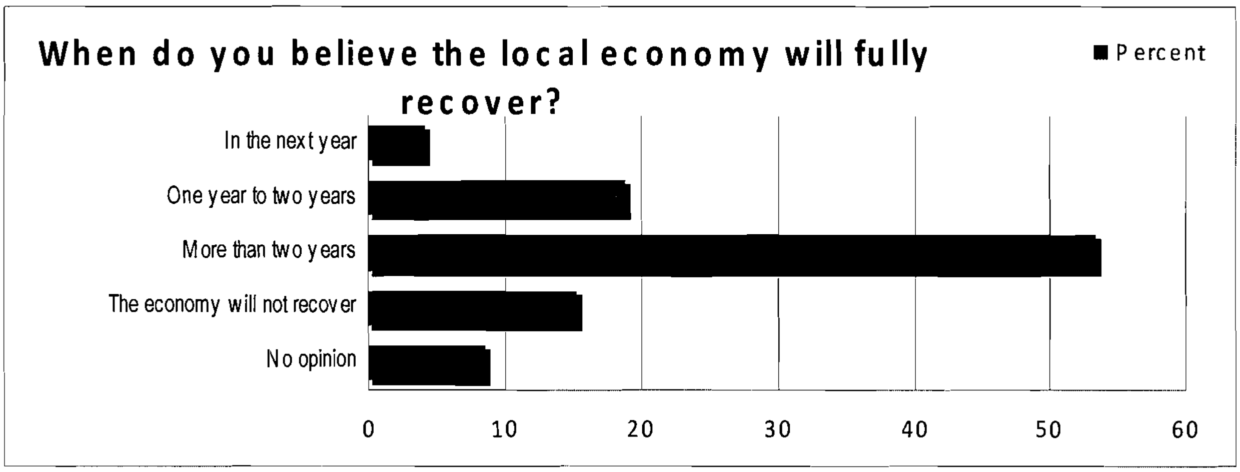
The Economy, Economic Impact, and Economic Recovery

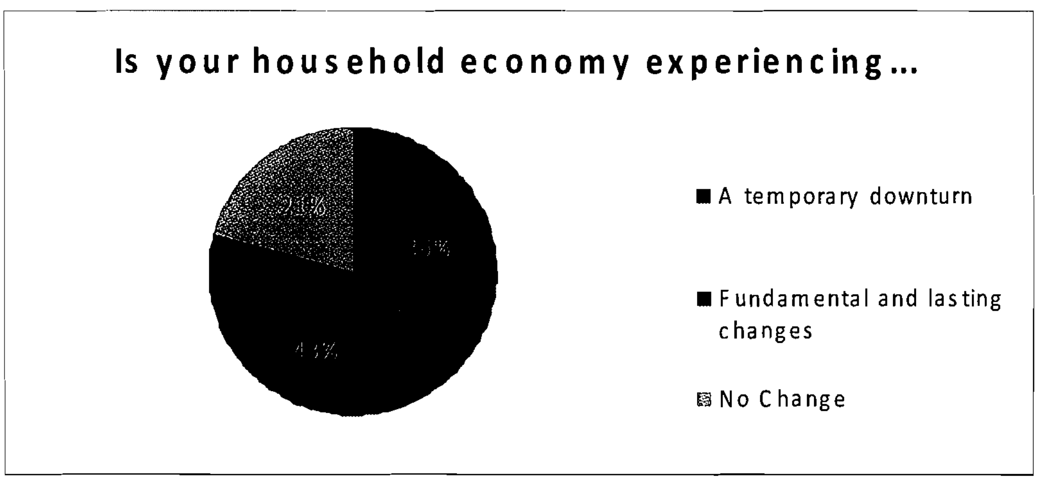
Members were asked questions about the economy and how it was effecting their household. They were also asked whether or not various levels of government should promote job development and whether or not they felt that government efforts to create jobs had been effective. The following charts are the results from those questions.

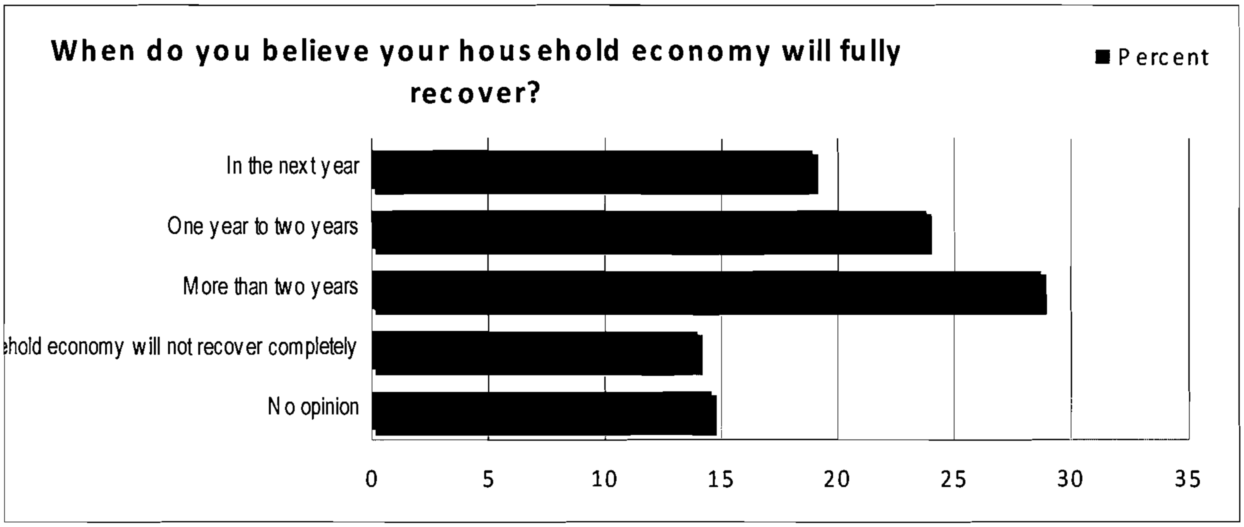


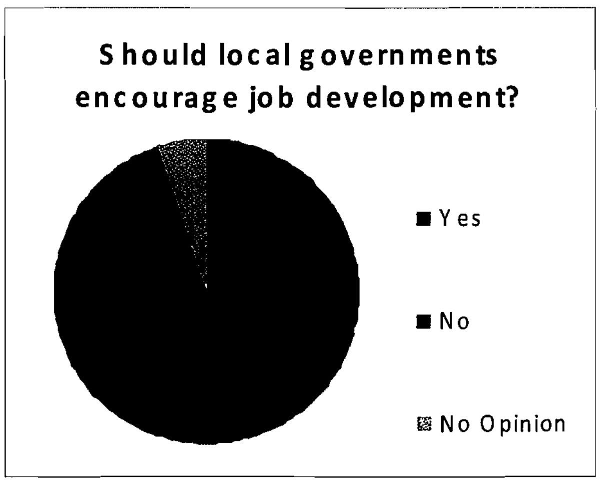


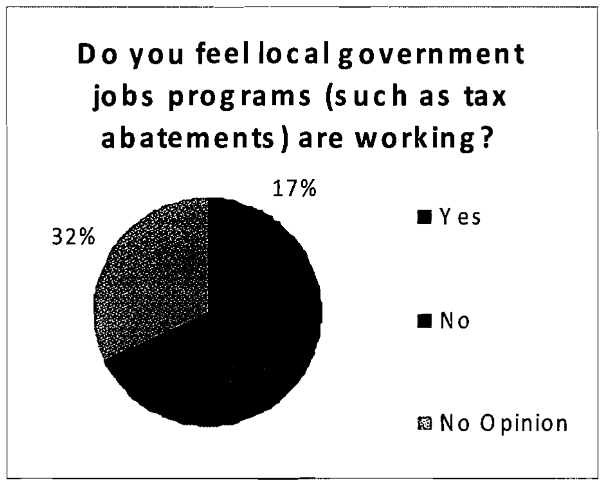

When do you believe the US economy will fully recover?
Percent
In the next year
One year to two years
More than two years
The economy will not recover
No opinion
0
10
20
30
40
50
60

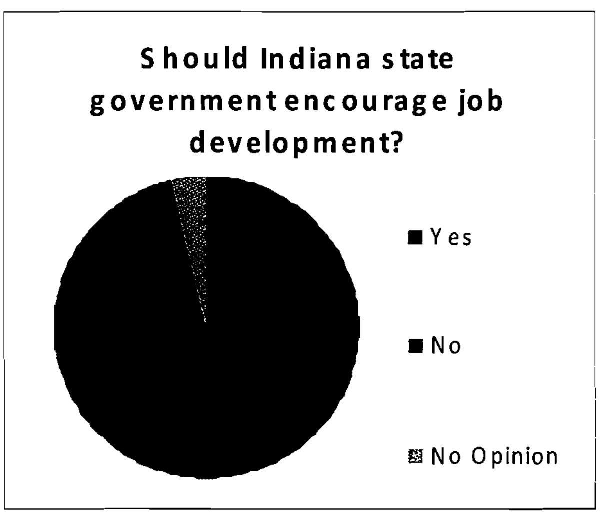

When do you believe the local economy will fully recover?
Percent
In the next year
One year to two years
More than two years
The economy will not recover
No opinion
0
10
20
30
40
50
60

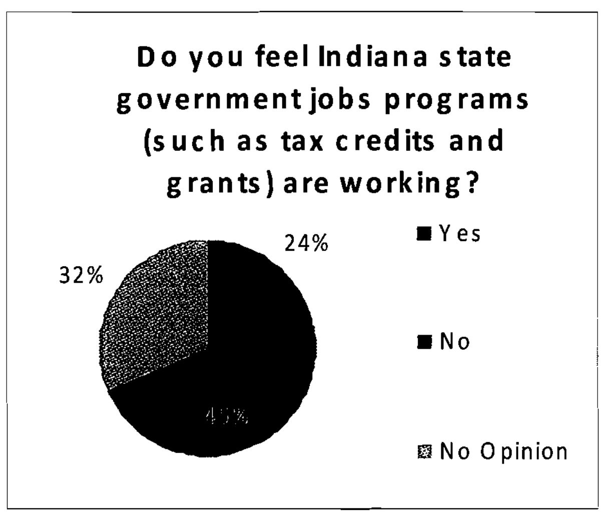

Is your household economy experiencing...
21%
A temporary downturn
Fundamental and lasting changes
No Change

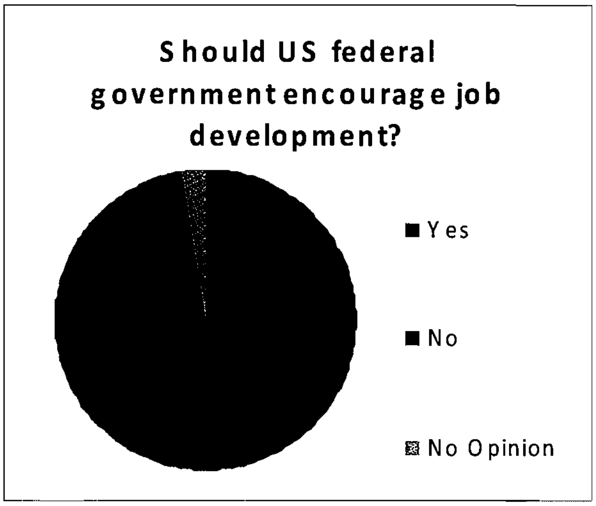

When do you believe your household economy will fully recover?
Percent
In the next year
One year to two years
More than two years
hold economy will not recover completely
No opinion
0
5
10
15
20
25
30
35

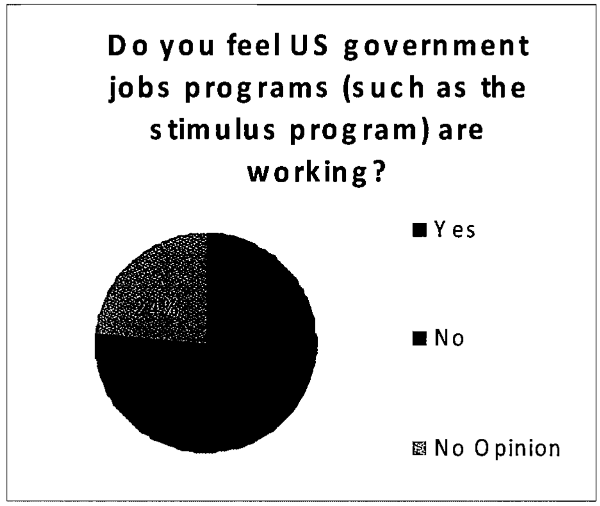

Should local governments encourage job development?
Yes
No
No Opinion


Do you feel local government jobs programs (such as tax abatements) are working?
17%
32%
Yes
No
No Opinion


Should Indiana state government encourage job development?
Yes
No
No Opinion

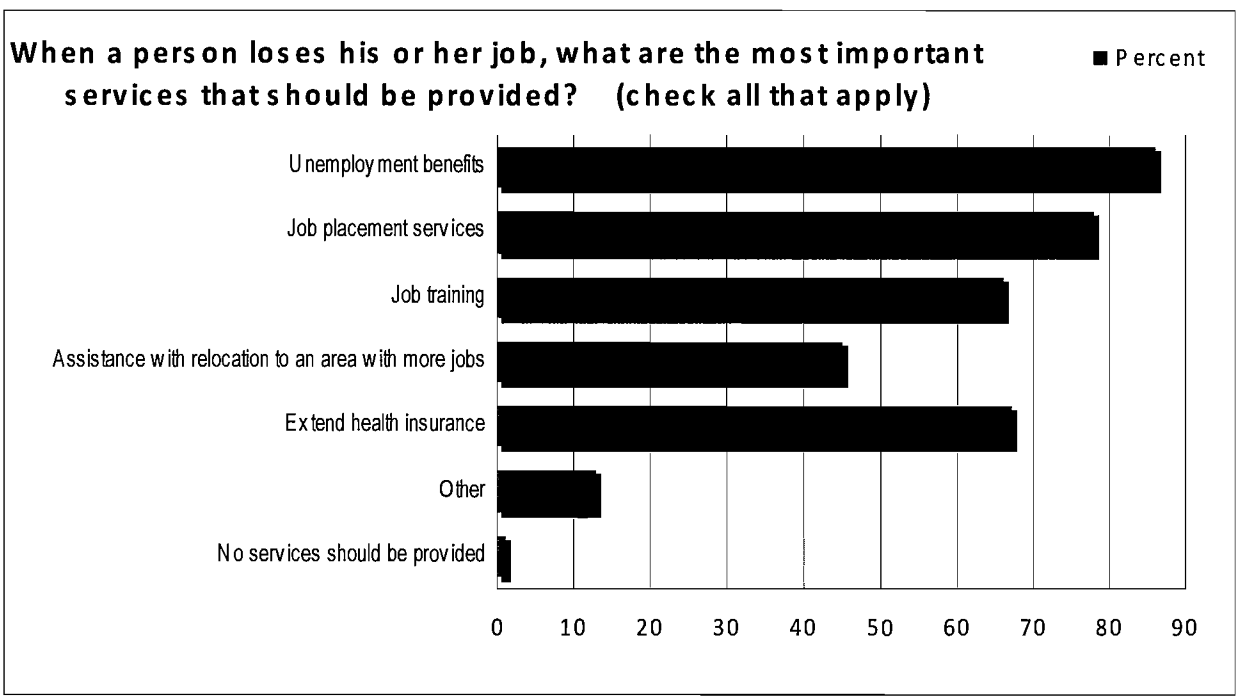

Do you feel Indiana state government jobs programs (such as tax credits and grants) are working?
24%
32%
Yes
No
No Opinion





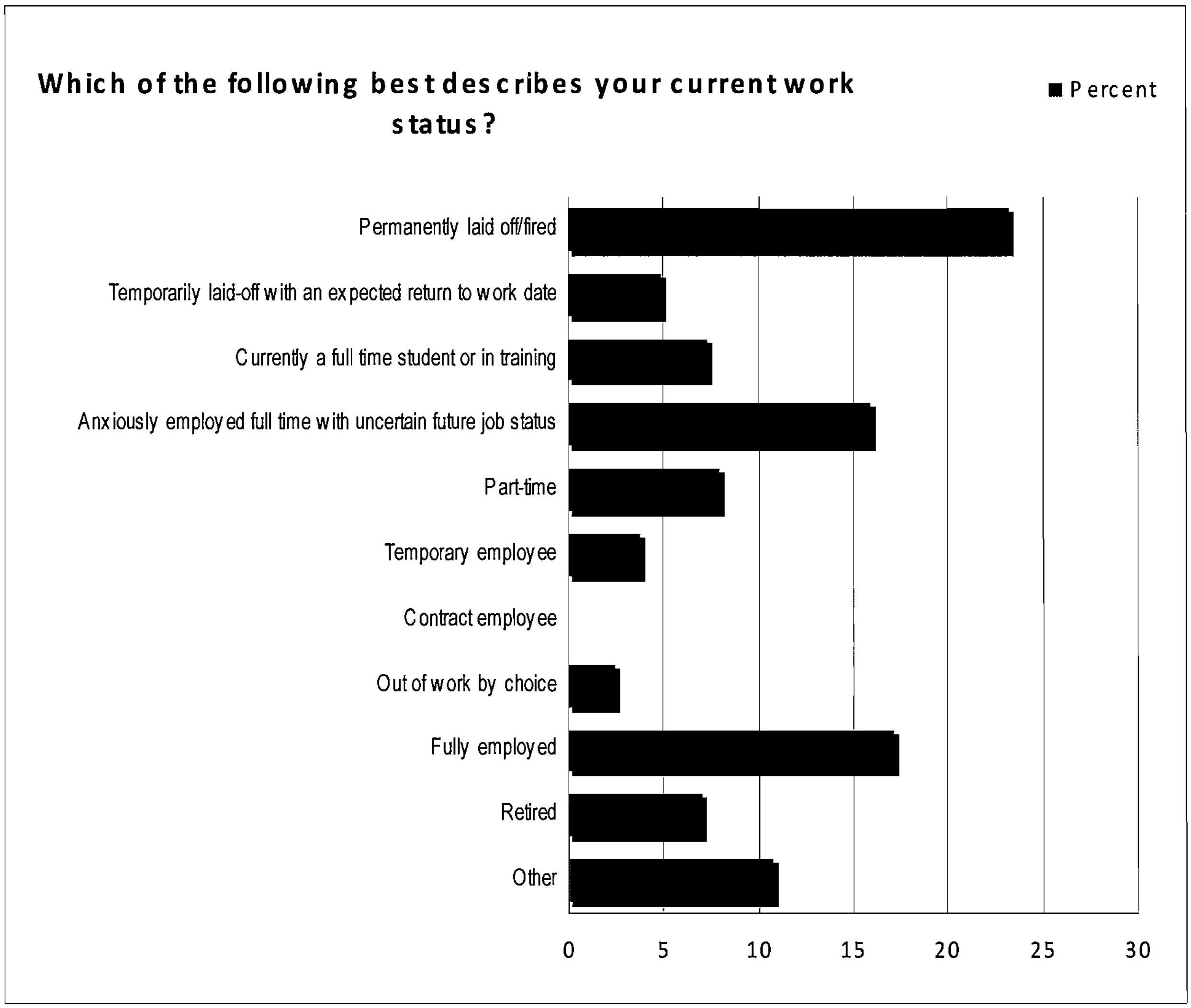
Unemployment Services and Support

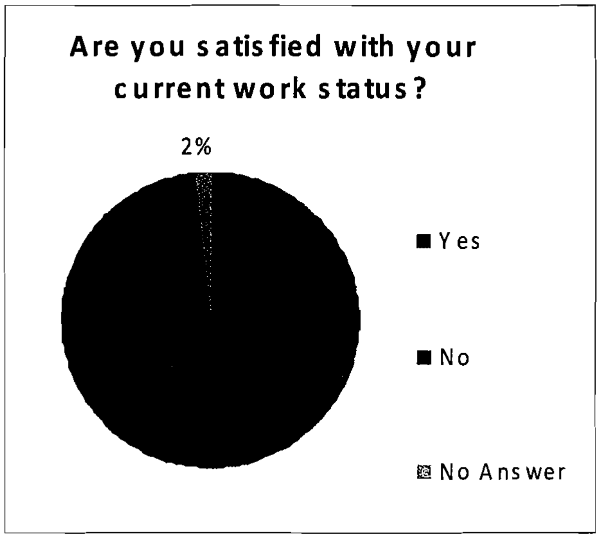
Members were also asked what unemployment services should be offered. The following charts are the results of those questions. The members who responded 'Other' could also write in what other services they thought should be offered. Members wrote in services including food stamps, food bank, heat, counseling, support groups, help paying bills, and housing assistance.

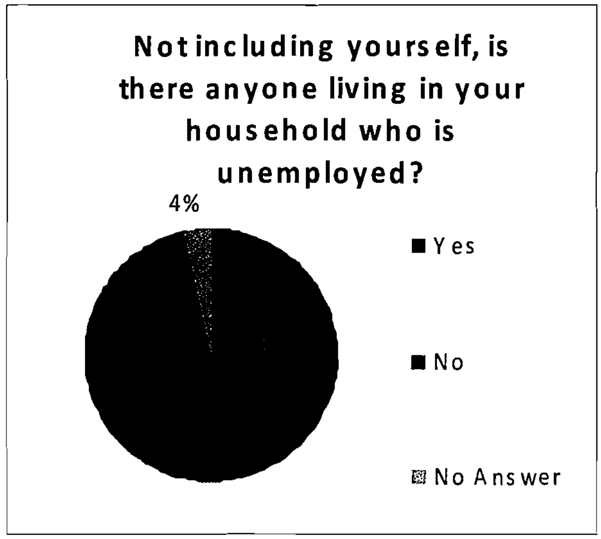


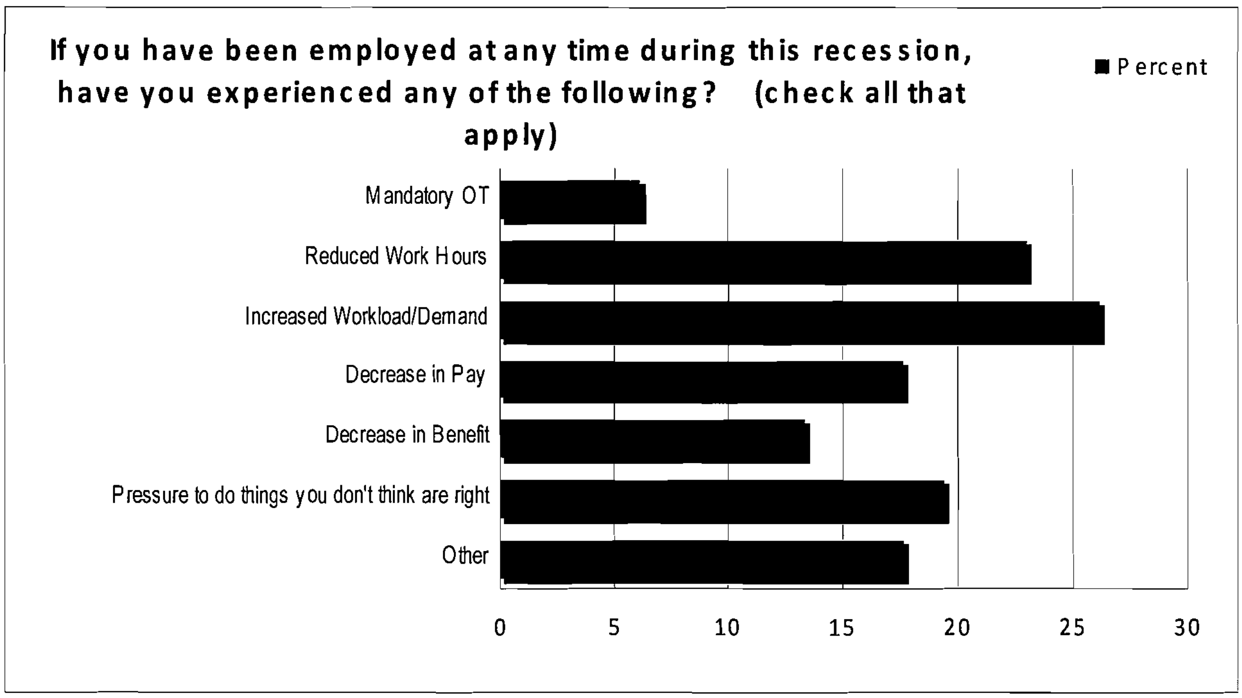
Work Status and Working Conditions during the Recession

Members were also asked about their work status, if anyone living in their household was currently unemployed, how they felt about their work status, and working conditions during the recession. The following charts are the results of those questions.





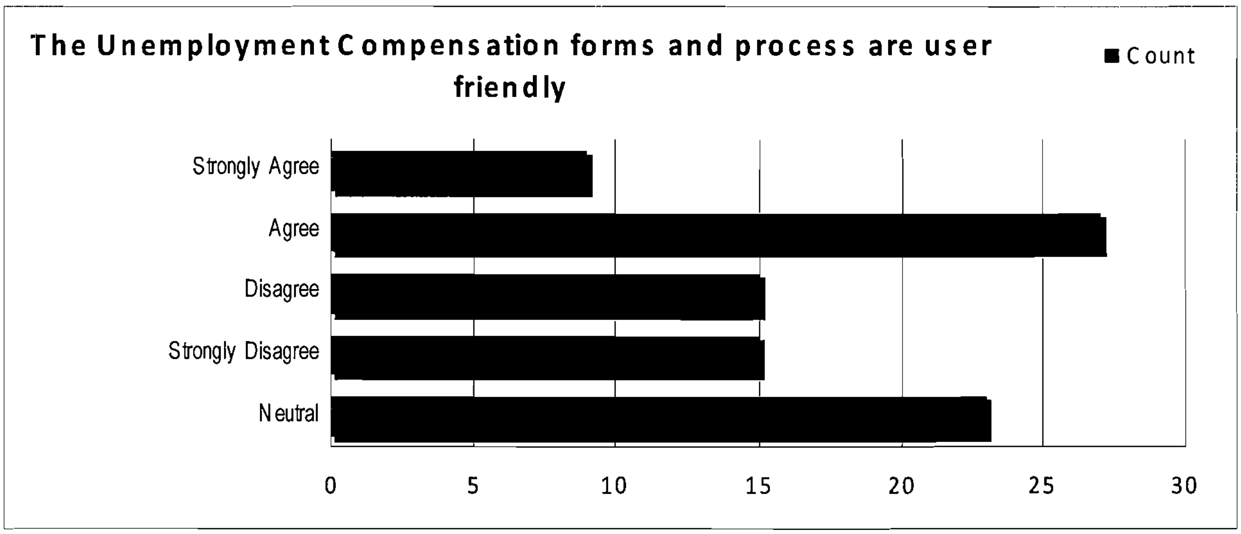


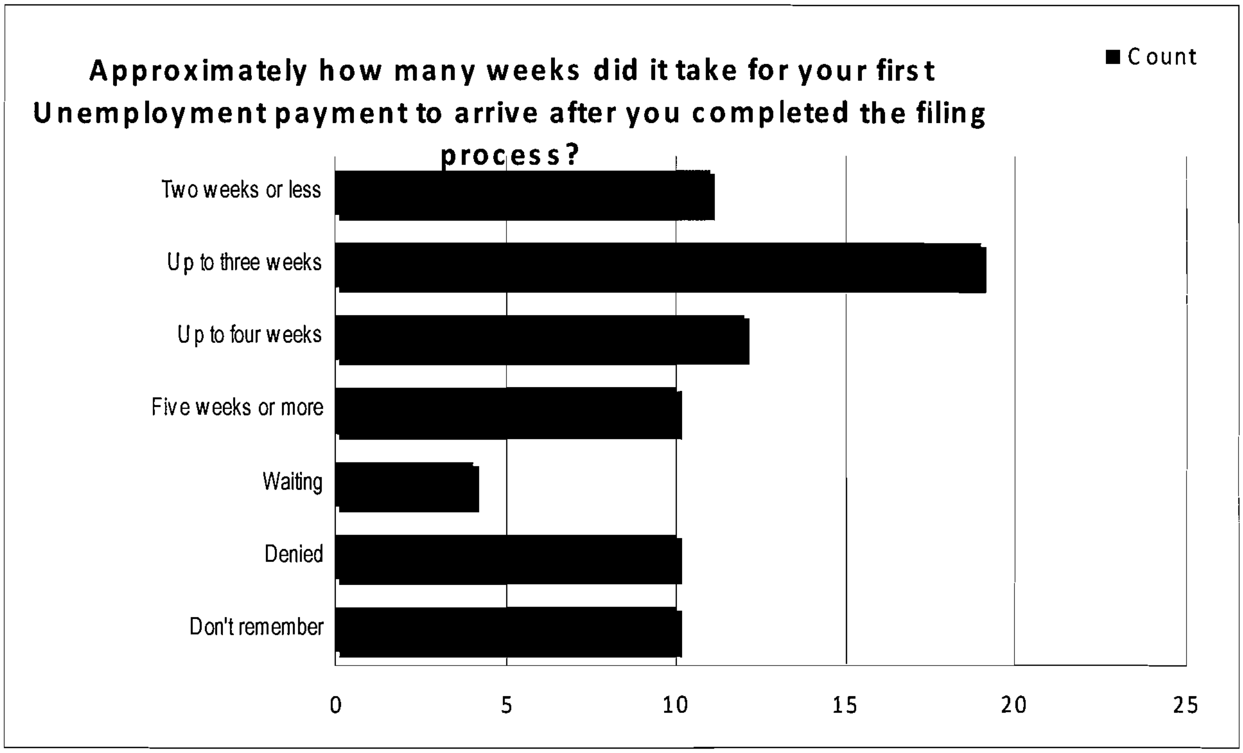


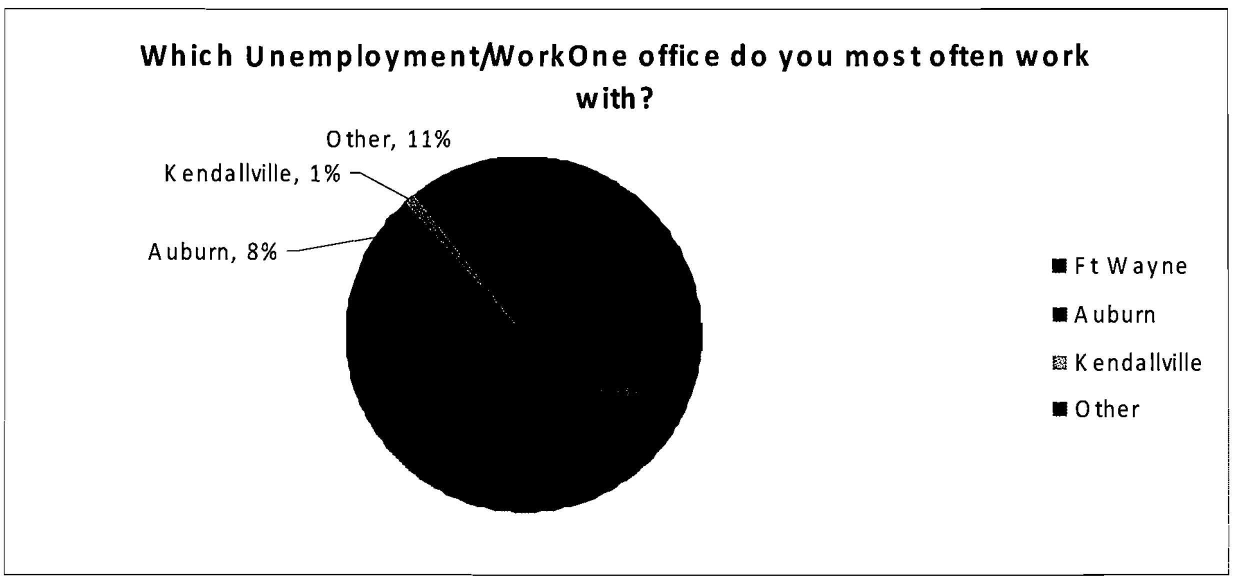
Members could write in answers if they experienced other changes while employed during the recession. Responses included more stress, pressure to do all work with less time and less help, had to take day off without pay.

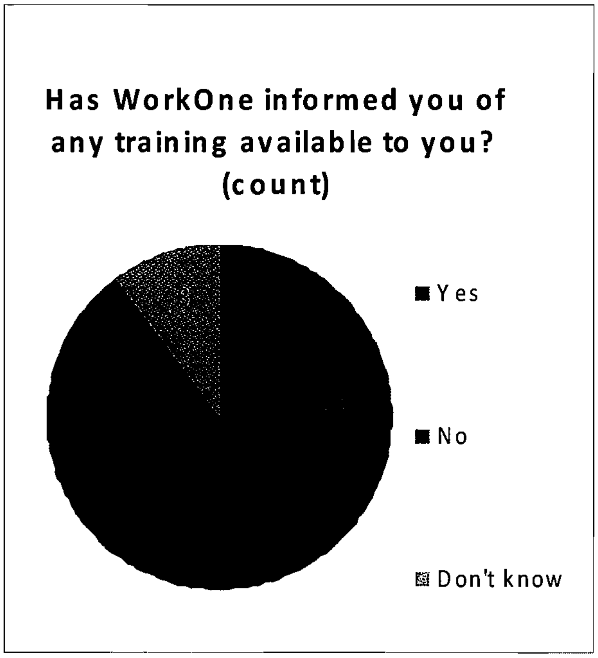
Satisfaction with Unemployment Services

Members were asked if they had been unemployed or laid off in the past two years and if they had filed for unemployment compensation or received other services. Only those members who had been unemployed in the past two years and had filed for Unemployment Compensation were asked to answer these questions.

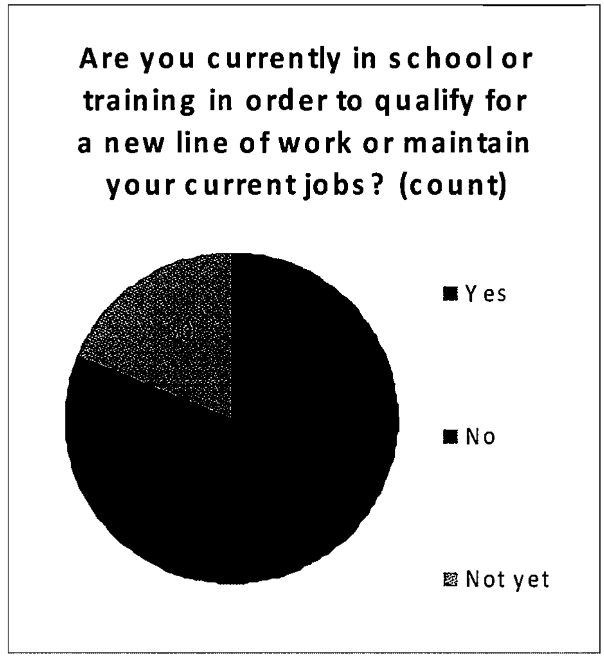



Approximately how many weeks did it take for your first Unemployment payment to arrive after you completed the filing process?
Count
Two weeks or less
Up to three weeks
Up to four weeks
Five weeks or more
Waiting
Denied
Don't remember
0
5
10
15
20
25

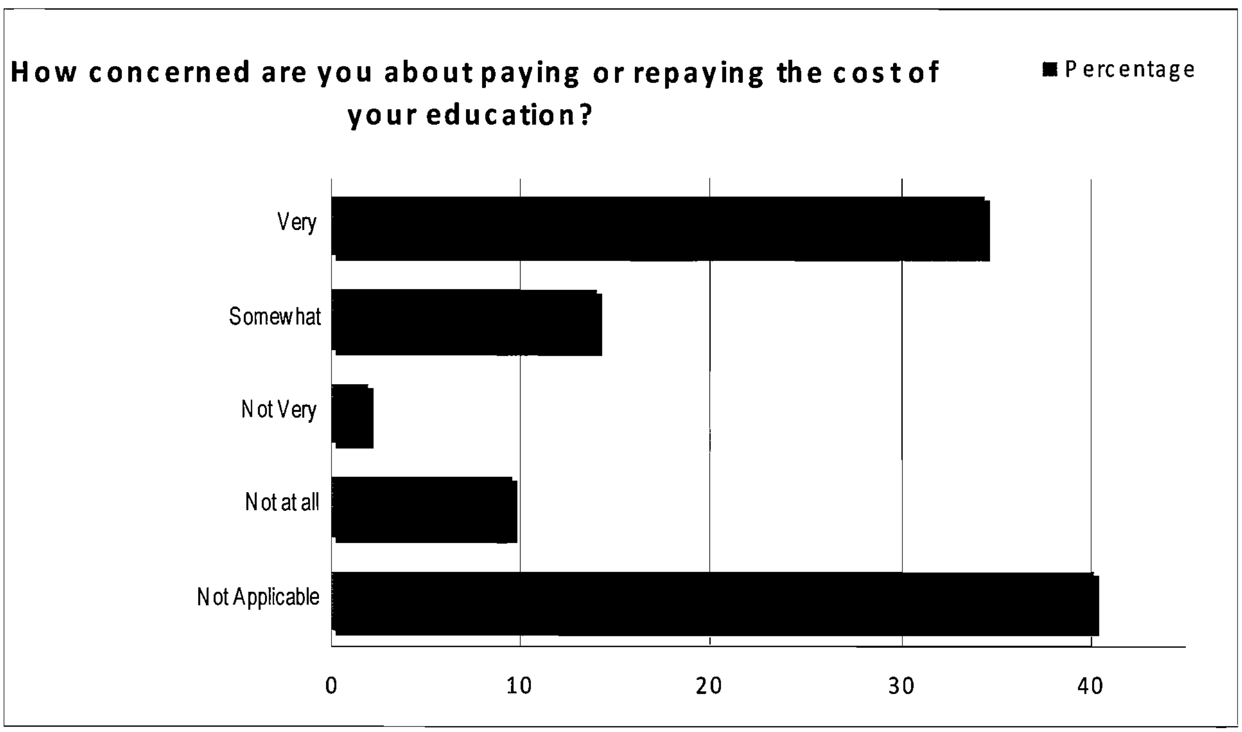

Which Unemployment/WorkOne office do you most often work with?
Other, 11%
Kendallville, 1%
Auburn, 8%
Ft Wayne
Auburn
Kendallville
Other



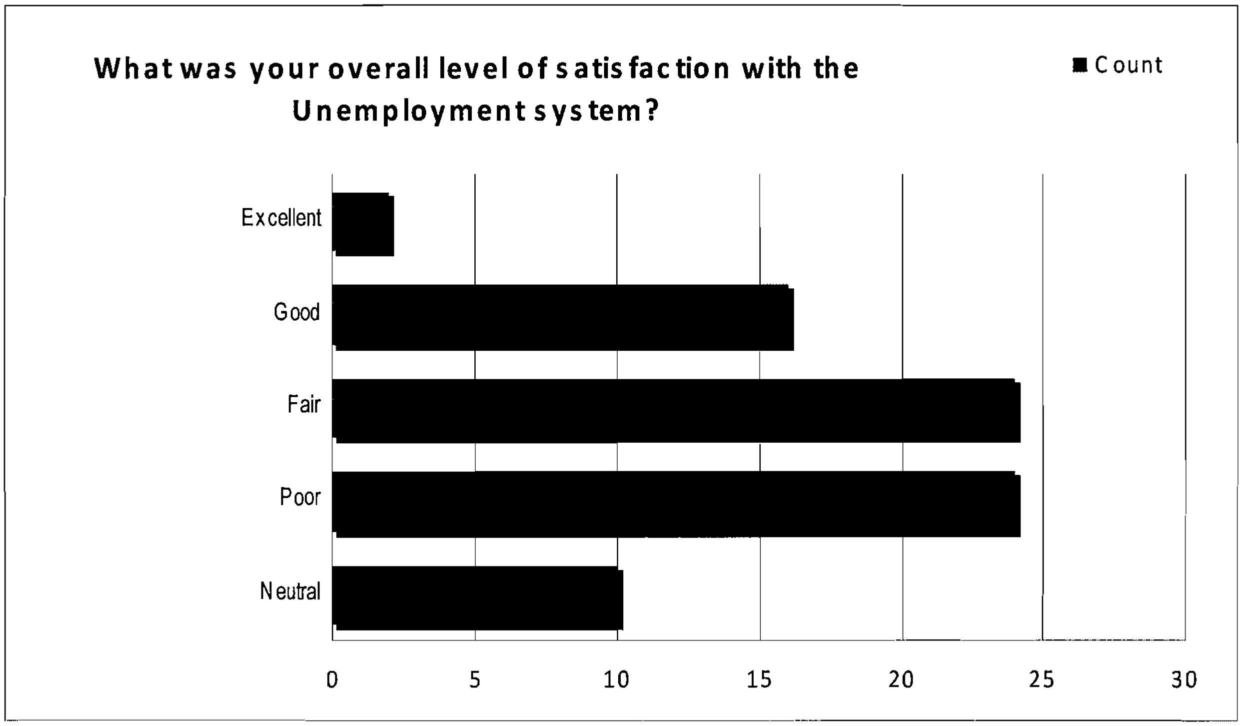
Has WorkOne informed you of any training available to you? (count)
Yes
No
Don't know

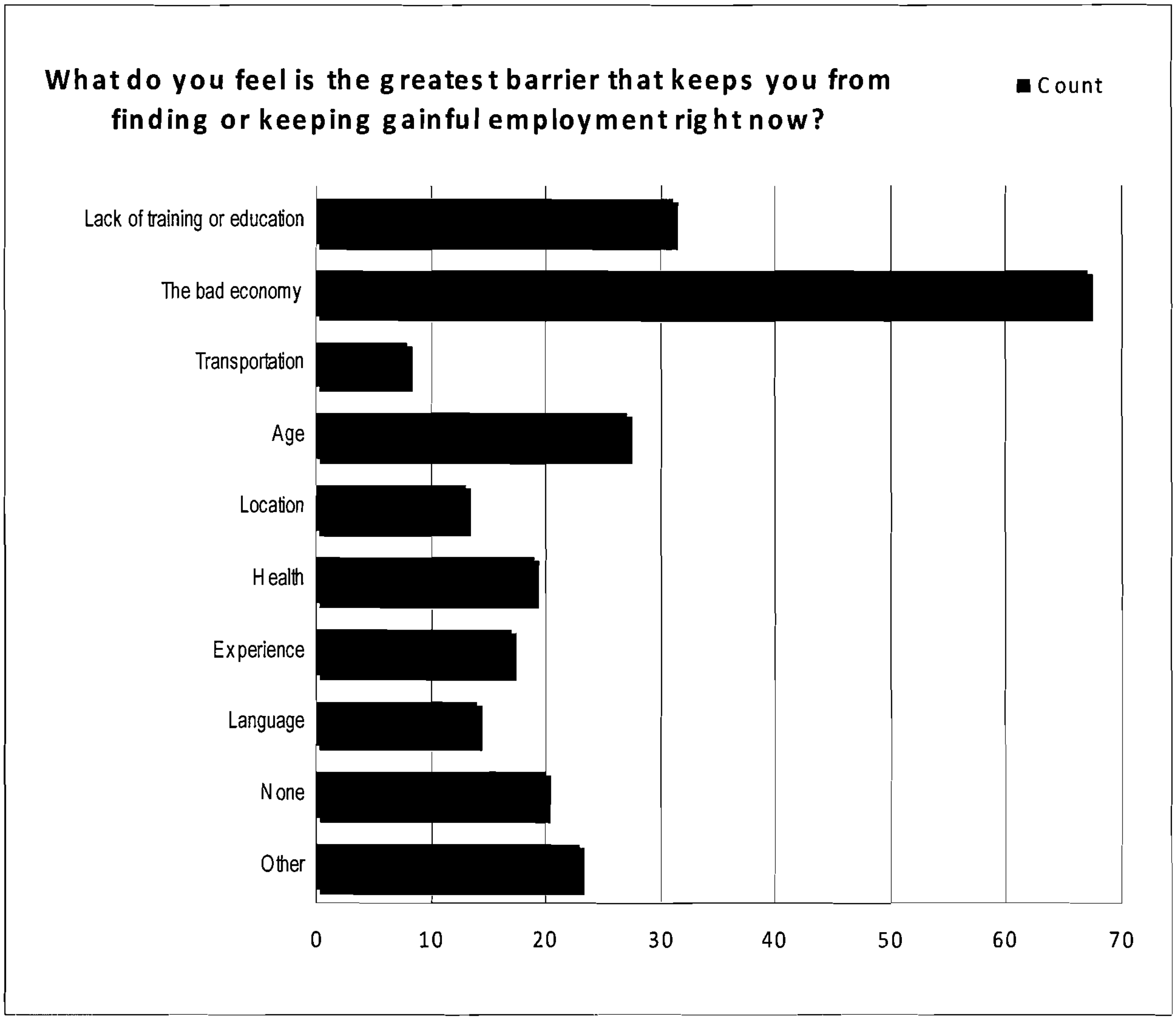


Are you currently in school or training in order to qualify for a new line of work or maintain your current jobs? (count)
Yes
No
Not yet



How concerned are you about paying or repaying the cost of your education?
Percentage
Very
Somewhat
Not Very
Not at all
Not Applicable
0
10
20
30
40


What was your overall level of satisfaction with the Unemployment system?
Count
Excellent
Good
Fair
Poor
Neutral
0
5
10
15
20
25
30



Members could write in a short answer if they had other barriers to employment that were not listed on the survey. Four responded that they felt their felony record was a barrier to obtaining work. Other responses were trade laws, outsourcing of work to other countries and southern states, disability, out of workforce too long, adults have taken jobs that students could have had, too many others looking for the same job, and been out of the workforce for too long.

Open Ended Questions about the Economy

Members were asked to write a brief answer to the following questions:

What do you think the long-term impacts will be on your household as a result of the current recession?

What do you think the long-term impacts will be on our community as a result of the current recession?

Who cares the most about people like you in this economy?

The answers are compiled in the attached spreadsheet.

UNEMPLOYED AND ANXIOUSLY EMPLOYED WORKERS' INITIATIVE SURVEY-UAEWI

ICED
OCT 17, 2011
EX 5

1. Is the US economy experiencing
   O A temporary downturn
   O Fundamental and and lasting changes

2. When do you believe the US economy will fully recover?
   O In the next year
   O One year to two years
   O More than two years
   O The economy will not recover
   O No Opinion

3. Is the local economy experiencing
   O A temporary downturn
   O Fundamental and and lasting changes

4. When do you believe the local economy will fully recover?
   O In the next year
   O One year to two years
   O More than two years
   O The economy will not recover
   O No Opinion

5. Is your household economy experiencing
   O A temporary downturn
   O Fundamental and and lasting changes
   O No Change

6. When do you believe your household economy will fully recover?
   O In the next year
   O One year to two years
   O More than two years
   O Our household economy will not recover completely
   O No Opinion

7. When a person loses his or her job, what are the most important services that should be provided? ***Check all that apply***
   O Unemployment benefits
   O Job placement services
   O Job training
   O Assistance with relocation to an area with more jobs
   O Extend health insurance
   O Other________________
   O No Services should be provided

8. Which of the following best describes your current work status?
   O Permanently laid-off/fired
   O Temporarily laid-off with an expected return to work date
   O Currently a full time student or in training
   O Anxiously employed full time with uncertain future job status
   O Part-time
   O Temporary Employee
   O Contract employee
   O Out of work by choice
   O Fully employed
   O Other________________

9. Are you satisfied with your current work status?
   O Yes
   O No

10. Not including yourself, is there anyone living in your household who is unemployed?
   O Yes
   O No

11. Have you been unemployed or laid off at any time in the past two years?
   O Yes
   O No
   If "no," skip to question 18.

12. In the past two years, have you filed for Unemployment Compensation?
   O Yes
   O No
   If "no," skip to question 18.

The next question will be rated on a scale from Strongly Agree to Strongly Disagree

13. The Unemployment Compensation forms and process are user friendly:
   O Strongly agree
   O Agree
   O Disagree
   O Strongly Disagree
   O Neutral

14. Approximately how many weeks did it take for your first Unemployment payment to arrive after you completed the filing process?
   O Two weeks or less
   O Up to three weeks
   O Up to four weeks
   O Five weeks or more
   O Waiting
   O Denied
   O Don't remember

15. Which Unemployment/WorkOne office do you most often work with?
   O Fort Wayne
   O Auburn
   O Kendallville
   O Other______________

16. What was your overall level of satisfaction with the Unemployment system?
   O Excellent
   O Good
   O Fair
   O Poor
   O Neutral

17. Has WorkOne informed you of any training available to you?
   O Yes
   O No
   O Don't know

18. Are you currently in school or training in order to qualify for a new line of work or maintain your current job?
   O Yes
   O No
   O Not Yet

19. How concerned are you about paying or repaying the cost of your education?
   O Very
   O Somewhat
   O Not Very
   O Not at all
   O Not Applicable

20. What do you feel is the greatest barrier that keeps you from finding or keeping gainful employment right now?
   O Lack of training or education
   O The bad economy
   O Transportation
   O Age
   O Location
   O Health
   O Experience
   O Language
   O None
   O Other__________________

21. If you have been employed at any time during this recession, have you experienced any of the following? ***Please check all that apply:***
   O Increased work hours
   O Mandatory overtime
   O Reduced work hours
   O Increased workload/demands
   O Decrease in pay
   O Decrease in benefit
   O Pressure to do things you don't think are right
   O Other____________

22. Should local governments encourage job development?
   O Yes
   O No
   O No Opinion

23. Should Indiana state government encourage job development?
   O Yes
   O No
   O No Opinion

24. Should US federal government encourage job development?
   O Yes
   O No
   O No Opinion

25. Do you feel US government jobs programs (such as the stimulus program) are working?
- O Yes
- O No
- O No opinion

26. Do you feel Indiana state government jobs programs (such as tax credits and grants) are working?
- O Yes
- O No
- O No opinion

27. Do you feel local governments jobs programs (such as tax abatements) are working?
- O Yes
- O No
- O No opinion

Please briefly answer the following few questions, they will not be multiple choice.

28. What do you think the long-term impacts will be on your household as a result of the current recession?

29 . What do you think the long-term impacts will be on our community as a result of the current recession?

30. Who cares the most about people like you in this economy?

Now just a couple questions for statistical purposes

What is your age?_____

What is your sex?
- O Female
- O Male

What is the highest level of formal education you've complete?

O Jr High	O High School	O Technical Degree	O Apprenticeship
O Associates	O Bachelors	O Graduate	

That is the end of the survey, thank you for your time.
(For the purposes of the drawing)

NAME____________________ PHONE NUMBER_________________________

Would you like a copy of the survey results? O Yes O No

RCED OCT 17, 2011 EK 6

Cod	Q28 What do you think the long-term impacts will be on your household as a result of the current recession?	Q29 What do you think the long-term impacts will be on our community as a result of the current recession	Q30 Who Care Most About People Like You?
1	possible loss of house and truck	People leaving area	People like me
2	none	none	The work class (?)
3	long term unemployment, no healthcare, less spending power	low pay and long term unemployment, less services	No one
4	there will be no high expenditures made from my household unless absolutely necessary. Like new appliance, car	frustration, causing low motivation among a lot of people	local people
5	have to live on much less for the indefinite future	More theft, violent crimes, amongst many smaller problems	People who have similar experiences.
6	divorce	Higher taxes	Democrats
7	possibly losing our house (I can't pay child support & afraid of going to jail)	Lesser Paying jobs with more work hours and responsibilities	Myself/some of the Democratic party, no one receiving money from "Big Business" I'm a Navy vet out of work and still try to find people who care!
8	loss of house, car, and children	Massive homelessness	Unknown
9	fallr (?)	Fair	People in the same situation
10	lower income	More joblessness	God
11	sell off a lot of toys	Stores closing	AFL-CIO
12	retirement issues		
13			
14	will take years if ever to get back	It will take years	No one
15	more prayer	more crime	God
16	I think I should have a job	yes	(illegible)
17			
18			
19			
20	Basically struggling to get through-no extra money to keep upkeep on the house.	If there is no jobs, people will panic. Not knowing what to do to provide for there families. Crime rates will go up.	People like me
21	it will might change by the next year	crime!	No one
22	reduced home equity	no opinion	local government
23			
24	lost house, car, ins. health	move out of area	No one

Cod	Q28 What do you think the long-term impacts will be on your household as a result of the current recession?	Q29 What do you think the long-term impacts will be on our community as a result of the current recession	Q30 Who Care Most About People Like You?
25	less funds to take care of things properly, which leads to less sanitary which leads to poorer health which leads to death at earlier age	No middle class A bigger gap between rich and poor	The middle class working American
26	no health insur		
27	no health insurance that is affordable	Loss of good paying jobs with benefits	Our selfs
28	don't know	Population loss, local economy	Us
29	lose my house have to move in w/family	People will become more desperate to get what they need. Crime level will rise	I don't know
30	our life will get worse	More breakends and hold ups	The union
31	our personal "recession" began in 2005 w/my husband's loss of employment w/an IT firm, He is employed full-time now (has been for the past 4-1/2 yrs, but we need to rebuild savings (retirement) & we worry about healthcare costs	Education(public) will suffer even more than currently, services we rely on & enjoy (public library etc) will cost more. Possibly increase in crime & general maintenance of city	Other people like me!
32	It has been really hard. It been hard trying to pay bills every month		
33	shcool	work hard	
34	Do apply	poor	Our unions
35	Will delay ability to pay of education expenses.	Degradion of all services. Public and private	Neighbors
36	It is going to take me longer to pay off loans & expenses that I have incurred over the past 5 years	loss of housing & population in the city	Nobody!
37	I believe that we will not make the same amount of money that we made before.	I am making the amount of money I made in 1980. Now! Prices are up and I spend less.	Us the people working it.
38	If job satisfaction does not improve and able to find a job at my age, it could become devistating	A slow recovery, and probably increase in taxation	Good question, (God)
39	Retired no impact.	same	DEM.
40	We will not be able to maintain the life style we are use to.	total breakdown of community	Sometimes it feels like no one does but my husband has been helped by your organization.

Cod	Q28 What do you think the long-term impacts will be on your household as a result of the current recession?	Q29 What do you think the long-term impacts will be on our community as a result of the current recession	Q30 Who Care Most About People Like You?
41	Not sure	more homeless, ruined credit scores, lots of job losses and ruined businesses	You!-that's the reason for the survey - Right!
42	nothing	don't know	nobody
43	homeless	not good	state
44	IRS takes the house	IRS takes their houses	us
45		N/A	
46	N/A	Cuts in education and public services	N/A
47	No college savings, no savings in general, just enough to get by and nothing more.	OK	Neighbors in the same situation
48	OK	More people going homeless	not much people do.
49	Have to live a low income life.		GOD
50			nobody
51	I cannot provide for my house or family	People will lose their house and everything	the community
52	A job hopefully	A job hopefully	a job hopefully
53	Don't know?	More crime and trouble	don't know?
54	Price of property dropped, no access to loan, no chances to sell	Taxes Increased up to the roof, Jobs cut, no benefits, frustration and thoughts to go to war with the government	I like to believe is: UAW, president of USA, my family
55			The church & Christian community.
56			
57	I believe that I will have to take a major cut in pay and switch employers.	There will be a loss of some small businesses & a devaluation of housing	The neighbors, churches, fire department, 4-H, etc. Oh also the East Allen county school corporation.
58	spending less.		
59	eventual job loss		Other people like me
60	lose of jobs	Loss of revenue	People like me
61	early retirement, less financial resources	Lower standard of living	Not the corporate entities
62	My job will probably be leaving town within 1 or 2 years and there will not be any decent paying jobs available.	People in the community are going to have to become very creative in order to have jobs, eat, and survive	The people who are affected by it only.
63	Decrease in buying power. Need for assistance in gaining a wage that will support successfully a family.	Crime, poverty, less education to the next generation	Me

Cod	Q28 What do you think the long-term impacts will be on your household as a result of the current recession?	Q29 What do you think the long-term impacts will be on our community as a result of the current recession	Q30 Who Care Most About People Like You?
64	Possible loss of incomes (mine and spouse). If this happens finding a job (good paying w/health benefits), not having to relocate, Unability to support local business w/anticipated purchases. Take longer to build up savings due to use in recession.	Loss of jobs, loss of employment, consumer unable to support current businesses with needed or anticipated purchases	The union
65	Children won't be able to attend college of choice	More highly skilled as it has pushed more back to school	Family and friends
66	tbd	tbd	Family and friends
67	Poor returns on 401(k), Fewer jobs available	Businesses are closing down! No new businesses are coming in	
68			
69			
70			
71	Will risk losing our life savings, I'm about to loose my job & the area supports too many unemployed to make getting another comparable job impossible. Mfg/ (engineering?) went over sea	Permanent loss of good jobs.	Obama? Nobody??
72			
73			No one!
74			
75			
76	Harder to pay bills, Can't buy a house	I have not been in Fort Wayne very long.	Government.
77	Harder to pay bills, Can't buy a house.	I have not been in Fort Wayne very long.	Government
78	Harder to pay bills, Can't buy a house.	I have not been in Fort Wayne very long.	Government.
79	Harder to pay bills. Can't buy a house	I have not been in Fort Wayne very long.	Government
80	Harder to pay bills	I have not been in Fort Wayne very long.	US government
81			Government
82	Harder to pay bills. Can't buy a house	I have not been in Fort Wayne.	W.I.C.
83	Loss of property	Loss of thousands more homes and property	Family & churches, and service groups
84		Lose what companies/jobs are left	Nobody

Cod	Q28 What do you think the long-term impacts will be on your household as a result of the current recession?	Q29 What do you think the long-term impacts will be on our community as a result of the current recession	Q30 Who Care Most About People Like You?
85	Less extra costly items	o supported as much	Community services
86	Reduce savings for retirement. Increased stress and related health problems.	More disparity of income and wealth	My family.
87	Uncertain	In her community, people seem to be working	Fellow human beings. Helping each other.
88	We live paycheck to paycheck from now on.	More poverty, less production	Nobody
89	Retirement plans have changed, paying off house has changed (won't be able to pay off early)	Lower income area, we won't have the income we used to have	Not politicians. Unemployment office
90	Uncertainty, unknown	Desperation of workers I know	United Way
91	It will be alright	I think everything will turn around	Work One
92	I'll survive, have 1994 car, 1988 gave away	I really don't think it looks good for jobs here.	No one
93	temporary set back	A lot of movement out of community unemployment up	Fellow church members & family
94	struggle economically, work longer to retire	FW will struggle lon	Haven't found anyone but Work One
95	no jobs in area		My community
96	Short term budget adjustments to maximize our cash flow	Could result in more jobless claims	Church.
97	-	Everybody will be at a downfall	-
98	Moving out of Indiana	yes	nobody
99			Teachers, parents
100	No opinion	no opinion	
101			
102	I think it will be very hard, if not impossible to recover or at least get my household back to normal because I still have to keep up w/the present bills.	I think a lot of businesses suffered & will continue to suffer simply because there are a lot of tasks & not a lot of people to perform those tasks.	In my opinion the only people who care about people like me, are other people like me.
103	eviction	homelessness and hungry children	People like me
104		Constant lack of job opportunities, companies going out of business, people losing their jobs, homes & happiness	all the people care

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105	Possibly never catching up on bills that continue to pile up regardless of my being unemployed.		Other people like myself who can relate to what I'm going through.
106	yes		
107	Unemployment benefits will run out and there won't be any employment available with substantial benefits.	Unemployment rates will rise and make all employment scarce	The Democratic party
108	Having to start over	Having to start over	Democrats
109	I don't know	I don't know	I don't know
110	I will have to work twice as hard to maintain my life style	The unemployment rate will rise, along with crime	Nobody in washington. Just ordinary people like me.
111	Loss of our home-foreclose	companys leave	churches.
112	Budget restraints, selling off assets	Fewer homeowners, lower wages	Family
113	Probably losing your house or lose your credit.	Foreclosures, people losing their jobs	People that have a good job, that keep a job and stay in a job
114	I will have more money when I "retire" at 62.	Cuts in services	nobody but especially not congress or elected officials
115	My mom will have more to cope with because my Dad will not be able to cope with very much anymore. My sister and I will need to work more to help out. If we all can find good jobs!	We are in for a rude awakening. I think a lot of stressed out people with little or no hope.	Nobody but family and Obama and the Democrats
116	I think my Dad will not be able to return to the job market successfully because of the stress and his age and other issues. I think my family has ben changed forever.	I think people feelings of hopelessness will become greater and the good paying manf. Jobs are a thing of the past and that poor will increase a lot	Democrats and others that are going thru the same stuff.
117	Possibly lose our home and have to live with parents. Affects our relationship because of increased stress. Increased debt because no health insurance.	Food banks and charities are overwelemed and no funding to help them.	Family. Gov. do not care. Democrats care and try but Republicans stop everything & tea party muddy the issues with lies
118	I will have less spending money forever.	more businesses will close	Some Democrats. The president. Other unemployed people. Some of the state agency's employees. Working America

Cod	Q28 What do you think the long-term impacts will be on your household as a result of the current recession?	Q29 What do you think the long-term impacts will be on our community as a result of the current recession	Q30 Who Care Most About People Like You?
119	Bankruptcy nearly no income to provide for my children.		Family and others in the same situation.
120	Don't know right now	don't know	No one but myself
121	Utilities and gas and food cost going up and I have a fixed income	Don't know we have to wait and see	No comment
122	None, I'm retired but my sons and grandchildren will suffer	Middle class will be gone. More poor and no jobs.	Family and self and Democrats
123	My kids are experiencing more stress with school and family. My husband is suffering anxiety because in this new job market has no place for him. I am rejoining the workforce after a 8 yr absence.	Good paying manf. Jobs are gone. Unions are going to have to fight harder with less money. The younger generation is going to have a tougher time finding jobs.	Democrats, family and people going thru the same thing
124	It makes it harder for us to pay bills.	We will no longer have jobs or even job security	Nobody but the small people family & friends.
125	Not being able to pay my bills. I use to feel middle class no anymore!!!!	The officials will spend my tax money on more stupid crap the community doesn't need.	My friends and family, not my government
126	Possible complete loss of everything	It will recreate itself, possible with a new higher level of permanently unemployed.	
127	Unknown	Unknown	us
128	Budgeting to the exact penny. Lacking our regular amenities. Not having as much luxury's. Always something on the rise to compensate for any increase in employment so it seems like the more money to make the more money they take	Everything will continue to rise. They will get poorer. Education will cost more than probably your career is worth leaving one in even more debt.	The people who develop these struggling organizations to help with our basic needs but the lack is their so they don't last long.
129	Being unemployed, is putting my bills so far behind,it will take a year or 2 to recover financially.	.	myself
130	Possible loss of home, prolonged underemployment	Very slow recovery creating greater unemployment and reducing tax base thus cycling through greater unemployment.	we help ourselves
131	Losing my house	Bad place to be	
132	none		
133	Paying bills on time.	More jobs loss.	President.

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134	No comment	Don't know	Ourself.
135	Bad	Bad	do not know
136	Wey I looking for a part time job now		people like you guys
137	When I get a job	IDK	Government
138	Hard to pay the rent and bills and my son	People will have to get out and move to other place due to not being able to get there bills paid and rent	ourself and family and friends
139	I will lose my family,children, home, in all everything I have worked to achieve in my life.	The same just in a larger area.	nobody
140	Maybe loose my home.	Crime will get worse.	me.
141	Maybe loosen my home, or not being able to help support my children.	down hill	People who are willing to help you train and find a job
142	no where to live, homeless	chaos	everyone cares about self
143	We need to be prepared for that meaning saving, stocking up.	A lot of programs to help people get self sufficient	
144	Don't know	Will not recover	No one
145	Just have to get a job	Just here to keep on going & not let yourself & flamy down	everyone
146	Have to get education to succeed	We will work harder to prosper	my family
###	There will be a decrease in household income because my husband is a carpet installer when people are dealing with bare necessities carpet moves to the bottom of the list.	I think our community will continue to lose businesses and become more financially depressed.	Our family and friends care, but I don't know that he local or federal government feel our pain.
###	Limited choices, no big tickets, purchases, e.g. dryer (which broken, etc) reduced purchases, postponing home repairs, needed household improvements, etc.	Community complaining that might lead to "giving up"	? My immediate family
###	Its been hard to take care of a family without a job	OK	everyone

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###	Decrease in spending - increase in savings-increased awareness of cost of necessities	Decrease in spending leading to potential cuts in workforce	Not sure
###	Less money for working class, my family!	Rich will get richer	Unions and favorable democrats
###	Will stay put. May lose work if my clients become unemployed.	More business will leave, more foreclosures	Others like me
###	Retirement fund is smaller	Lost jobs and businesses	?
###	further difficulties finding employment	More homeless people	faith leaders
###	Not sure what our future has in store	Businesses will be moving out and people will have no choice but to follow	people like me
###	Inability to retire, dwindling assetss	Increased gap between poor and wealthy	Others who are unemployed or anxiously employed
###	Loss of retirement never to be regained pensions & 401(k)s	More layoffs after elections	No one

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###	relocation, less than full time work for both of us	United Way/social services will be decreased	candidates for office
###	No extras, outings, trips	Debt	non-for-profit org, churches
###	more crime in our community	The haves and have nots	myself and my family
###	Return to basic values	Creating partnerships between entities to address local concerns as they arise	
###	If no employment very bad	Lots more foreclosures and homelessness	People like me
###	We getting by (barely)	People go nuts!	God!
###	People are going to be jobless	Community will be going down	government
###	There will be a lot of arrangements and adjustments tht have to be made	more crime	

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EX 7

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Study: Local incomes slip as economy shifts

Ron Shawgo | The Journal Gazette

Allen County is growing though incomes have slipped, has mixed educational success among minority groups and more college graduates but relatively few with advanced degrees.

The findings are from a new local report that, while sounding some positive notes, expresses concern that black income, for example, has declined sharply compared with white income and poverty rates have increased dramatically among children and older residents.

The report, to be released today by the Community Research Institute at IPFW, provides a profile of Allen County using recent census figures. The institute's staff has been analyzing the numbers for the last five months using a grant from the John S. and James L. Knight Foundation, said John Stafford, the research group's director. The grant was issued through the Community Foundation of Fort Wayne.

The report uses mostly data from the U.S. Census Bureau's American Community Survey, a sampling of the population between 2005 and 2009, and not 2010 census figures, which are slowly being rolled out this year. The report will be updated when newer data are available.

A draft copy of the report was provided to The Journal Gazette.

Stafford said the idea is to solicit community involvement in areas addressed by the report. He also noted that Allen County is not unique in its struggles.

"What's going on in Allen County – northeast Indiana – is not radically different than what's going on in many, many, many other Midwestern industrially based communities," he said.

Here is a look at some the report's findings:

County comparison

College degrees for population age 25 and older:

	Allen County	Indiana	U.S.
Associate	9.2%	7.2%	7.4%
Bachelor's	17%	14%	17.4%
Master's and above	7.7%	7.9%	10.1%

Median household income:

Allen County	Indiana	U.S.
$47,901	$47,465	$51,425

Percent of children age 17 and younger living in poverty:

	Allen County	Indiana	U.S.
1990	10.5%	14.2%	18.3%
2000	12.9%	12.2%	16.6%
2009	20.5%	20%	20%

Source: Community Research Institute analysis of census data

The Journal Gazette

Income

In the last decade, Allen County median household income fell below the national average for the first time. County wages based on a national scale have been declining since the 1980s, largely because of the loss of high-paying manufacturing jobs. The county's increasing rate of single-person households – 27.4 percent and larger than the state and nation – is also a factor.

The declining income "is alarming in the sense that Allen County is the third largest populated county in the state," the report cautions. "Urban areas tend to have higher wages for a variety of reasons."

All minority median household incomes declined since 2000 in relation to white income. But blacks appear to be hit the hardest by the recession. With a median income of $28,132, blacks made about 54 percent of what white households earned, according to the 2005-09 data. That's a 10-percentage-point drop since 1989.

"On a national level, the same is true for blacks and Hispanics except their income decline relative to whites has been greater in Allen County," the report states.

Education

Allen County residents age 25 and older have a higher percentage of associate degrees than the state and nation, but trail in advanced college degrees.

Nationally, 10.1 percent of Americans have a master's degree or more, while 7.7 percent of Allen County residents do.

Of those aged 25 to 34, 26.6 percent have a bachelor's degree compared with 30.5 percent nationally. A higher percentage might be expected because the county is one of the largest urban areas in the state, the report states.

A higher number of associate degrees is important given "the manufacturing focus of our economy," Stafford said. "Those appear to be the level at which a lot of our jobs are demanding that associate's degree or technical training beyond high school. ... Now that fits the economy that we are and we've been, not necessarily the economy we know we need to transition toward."

Meanwhile, more than two in five area Hispanics failed to finish high school, a rate that has not improved in the last 20 years. In fact fewer Hispanic females on average graduated from high school, down to about 24 percent from 30 percent in 2000.

"This is a good example of the type of question we think the community engagement can help look at," Stafford said. "I suspect we're not the only ones who have identified this issue."

Whether it represents lower educational attainment among recent immigrants or a trend among those already here is unclear.

Blacks, on the other hand, have improved educational attainment from high school through college. Blacks with a bachelor's degree or higher have climbed from 8 percent in 1990 to 12 percent in 2009.

"That's a substantial improvement in a relatively short period of time," Stafford said.

Poverty

Until the recession, Allen County had a lower poverty rate than did the state and the nation.

In 2009, one out of five children was in poverty, up from one in eight in 2000, higher than the national average. In addition, while poverty rates among four age groups that represent people aged 25 to 64 were much lower than national levels in 2000, they surpassed national rates in 2009 with dramatic increases.

"This does not bode well as some of these persons will be entering the retirement phase of their lives, and the other half are still considered to be in the prime productive phase of their lives," the report states. "Not only are they in poverty now, but it is a safe bet to assume preparation for retirement income is not taking place at the level it needs to be."

Less than 3 percent of all seniors, representing more than 2,000 people, in the county live in poverty. Some older age groups have seen dramatic jumps in poverty.

With poverty rates for the 55 to 64 age group at 11 percent and the 65 to 74 group at 7.1 percent, "the future for seniors does not look as rosy as it once did," the report states.

While the increase can be partly attributed to the recession, changes in traditional pension plans probably contributed, the report suggests. Contributions to 401(k) retirement plans "may not add up to the amounts necessary for future needs."

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ALLEN COUNTY 2005 TAX ABATEMENTS

ABATEMENT	06 Compliance	07 Compliance	08 Compliance	09 Compliance	10 Compliance	
AC1*	NR	E-83%; P-82%	E-77%; P-77%	E-73%; P-74%	NR	Two different reports for 2007; created AW 73% of projected AW for 2007
AC2	E-87%; P-Y	E-89%; P-Y	E-58%; P-91%	E-52%; P-58%	E-35%; P-38%	Downward spiral
AC3*	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	AW of projected jobs created $44,000/actual less than MW at $1,747 and $3,840 and best at $16,873
AC4*	E-Y; P-84%	E-81%; P-71%	E-92%; P-56%	E-83%; P-83%	E-Y; P-94%	Wide fluctuations in AW
AC5*	NR	E-11%; P-4%	E-22%;P-21%	E-Y; P-78%	E-Y; P-78%	Less than MW 2007; 2009&2010 E & P exactly same; projected AW was $43,407/actual $30,541
AC6*	NR	Y-96%; P-93%	NR	E-64%; P-69%	NR	Went from 56E to 54E; AW increased $2,500; does payroll include OT?
AC7*	E-Y; P-Y	NR	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	Projected AW was $17,000/actual was $15,612 down to less than MW. What are "retained employees"?
AC8*	E-98%; P-91%	E-Y; P-99%	E-Y; P-Y	E-Y; P-72%	E-6; P-85%	AW decreased $10,000+
AC9*	NR	E-92%; P-Y	E-59%; P-43%	E-64%; P-60%	E-38%; P-37%	Wide fluctuations in payroll & AW
AC10	NR	NR	NR	NR	NR	Appears did not use this abatement
AC11*	NR	NR	NR	E-Y; P-85%	E-Y; P-85%	AW of created jobs less than MW at $7,114; 2009 & 2010 reports exactly the same
AC12*	NR	*	*	*	NR	*2 reports each year with entirely different numbers
AC13	NR	NR	2 diff.rpts.	NR	NR	No projections/expectations for job retention or creation

E=#Employees
P=Payroll$
Y=100%or greater
NR=No Report
AW=Average Wage
MW=Minimum Wage

13 applications for designation
1 project didn't proceed

*Questionable Numbers Reported in 92% of the Active Tax Abatements

#Employees may include:
- part-time employees
- temporary employees
- officers
- contract workers

Payroll figures may include:
- bonuses
- benefits
- overtime
- pay based on a partial year

Some figures appear to be made up
Average wage of created jobs is less than minimum wage (4)

Rec'd
OCT 17, 2011
EX 8

FORT WAYNE 2005 TAX ABATEMENTS

ABATEMENT	06 Compliance	07 Compliance	08 Compliance	09 Compliance	10 Compliance	
A	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	Created AW only 78% of projected AW
B	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	Created AW only 83% of projected AW
C	Didn't go forward					Didn't go forward
D*	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	CF-1 figures are exactly as SB-1 figures every year
E*	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	Wide fluctuations in created payroll and created AW
F	Moved to Ent. Zone					No note
G*	E-Y; P-95%	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-62.5%; P-90%	Created AW less than MW;understated #current employees on SB-1
H*	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	Wide fluctuations in created payroll and created AW
I*	E-86.3%; P-NR	E-90.9%; P-97.3%	E-Y; P-Y	E-95.4%; P-Y	E-86.3%; P-Y	Created AW less than MW 2 yrs; no new jobs 2 yrs
J	Closed					No note
K	Closed					No note
L*	Abatement Amended		E-59%; P-86%	E-59%; P-86%	E-59%; P-86%	#of employees and payroll exactly same every year
M	E-92.9%; P-91.1%	E-92.9%; P-91.2%	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	No note
N*	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	Wide fluctuations in created payroll and created AW
O*	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	Wide fluctuations in created payroll and created AW
P*	E-Y; P-Y	E-Y; P-Y	No Report	No Report	E-Y; P-Y	Wide fluctuations in created AW—less than MW TO $71K
Q*	E-Y; P-78.7%	E-Y; P-62%	E-Y; P-62%	E-Y; P-Y	E-71%; P-59%	Did not provide $s for "hourly" workers
R*	E-Y; P-87.6%	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	Created AW $3,500-20,000 less than projected
S*	No Report	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	Suspiciously round payroll numbers
T	E-68.5%; P-79%	No Report	No Report	No Report	No Report	Perhaps did not follow thru
U*	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	Questions re payroll figures
V	E-Y; P-Y	No Report	No Report	No Report	No Report	Perhaps did not follow thru
W	E-NR; P-NR	No Report	No Report	No Report	No Report	Perhaps did not use TA?
X	Never filed					Did not follow thru
Y	No Report	No Report	E-91%; P-96.6%	E-87%; P-90.1%	E-73.8%; P-83.6%	No new jobs;retained only 73.8% of jobs
Z*	NR	E-44.2%; P-72.8%	E-32.6%; P-46%	E-27.9%; P-47.5%	E-30.3%; P-48.6%	Non-compliant every year; wide fluctuations in AW
AA*	E-82%; P-Y	E-98%; P-Y	E-Y; P-Y	E-93%; P-Y	E-86%; P-Y	2 entities/conflicting reports; created AW less than MW to 4X projected AW
BB*	E-Y; P-Y	E-Y; P-Y	E-NR; P-NR	E-Y; P-Y	E-Y; P-Y	Wide fluctuations in #of employees, payroll, and AW

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CC*	E-95.9%; P-Y	E-Y; P-Y	E-Y; P-Y	E-75.4%; P-Y	**E-64.8%; P-76.7%**	Wide fluctuations in created payroll and created AW
DD*	**E-20%; P-46.1%**	**E-30%; P-80.9%**	**E-30%; P-82.8%**	**E-30%; P-86.2%**	**E-30%; P-86.2%**	Are business owners employees?
EE*	**E-71.5%; P-58.9%**	NR	**E-61.9%; P-73.7%**	NR	**E-52.4%; P-66.1%**	Non-compliant every year; AW increased 10K
FF*	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	E-Y; P-Y	Wide fluctuations in created payroll and created AW
GG*	NR	**E-16.9%; P-4%**	**E-27.5%; P-35.7%**	**E-35.7%; P-47.8%**	**E-47.5%; P-70.2%**	Wide fluctuations in created AW including less than MW
HH*	E-Y; P-96.2%	E-Y; P-Y	E-Y; P-Y	E-96.4%; P-Y	E-82.3%; P-Y	Questionable payroll figures; wide fluctuations in created AW
II*	NR	**E-30%; P-42.3%**	NR	**E43.4%; P-50%**	**E-46.7%; P-50%**	Wide fluctuations in created AW; payroll figures round to 100K
JJ	Investment not made?					Did not follow thru
KK*	E-95%; P-Y	No Report	E-97%; P-Y	No Report	No Report	Huge discrepancies in created payroll/AW
LL	E-85.8%; P-90%	No Report	E-95.3%; P-99%	No Report	No Report	No note
MM*	NR	NR	E-Y; P-Y	NR	E-Y; P-Y	Discrepancies re payroll figures
NN*	E-90.3%; P-Y	E-88.9%; P-Y	E-96.2%; P-Y	E-89.6%; P-Y	**E-75%; P-72.9%**	Created AW 170-329% of projected AW
OO*	E-85%; P-89%	E-Y; P-89%	E-Y; P-98%	E-Y; P-86%	E-92%; P-Y	Huge discrepancies in created payroll/AW
PP*	E-87.5; P-93.6%	E-87.5; P-Y	E-Y; P-Y	E-95%; P-Y	E-75%; P-88.6%	Didn't know how to calculate created payroll
QQ*	E-86.2%; P-Y	E-Y; P-Y	No Report	E-Y; P-Y	E-Y; P-Y	Wide fluctuations in created AW including less than MW

E=#Employees
P=Payroll$
Y=100%or greater
NR=No Report

43 applications for designation or amendment
12 applications were for amendments to existing designations
31 applications were for new designations
6 apparently did not proceed

*Questionable Numbers Reported in 85% of the Active Tax Abatements

#Employees may include:
- part-time employees
- temporary employees
- officers
- contract workers
- tenants

Payroll figures may include:
- bonuses
- benefits
- overtime
- pay based on a partial year

Some figures appear to be made up
Average wage of created jobs is less than minimum wage (6)

Company Name _ABATEMENT BB_
Address of Facility

Application Date
Estimated Total Abatement

	Real Estate Investment	Pers.Prop. Investment	Current Employees	Compl.	Current Payroll	Compl.	Current Avg.Wage	Retained Employees	Compl.	Retained Payroll	Compl.	Created Employees	Compl.	Created Payroll	Compl.	Created Avg.Wage
Proposal 2005		579,000	54 (59)		1,468,150 (1,583,150)		27,188	54		1,468,150		5		115,000		23,000
Report 1 2006		831,331	88	Y	2,181,050	Y	24,784	54	Y	1,468,150	Y	34	Y	712,900	Y	20,970
Report 2 2007		831,331	285	Y	11,346,994	Y	39,814	54	Y	1,468,150	Y	231	Y	9,878,844	Y	42,765
Report 3 2008		309,763	NR	-	NR	-	NR	NR	-	NR	-	NR	-	NR	-	NR
Report 4 2009		309,763	90	Y	6,935,805	Y	77,064	90	Y	6,935,805	Y	36	Y	6,820,805	Y	151,880
Report 5 2010		38,515	108	Y	9,246,379	Y	85,614	108	Y	9,246,379	Y	54	Y	7,778,229	Y	160,708
Report 6																
Report 7																
Report 8																
Report 9																
Report 10																

Other Local Grants/Incentives
State Grants/Incentives

Estimated Total Subsidy Per Job Per Year
Vote Abstentions
Notes:

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CITY OF FT WAYNE

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DEPT. OF ECON DEVL.

STATEMENT OF BENEFITS
PERSONAL PROPERTY
State Form 51764 (5-04)
Prescribed by the Department of Local Government Finance

FORM SB - 1 / PP

INSTRUCTIONS:

1. This statement must be submitted to the body designating the economic revitalization area prior to the public hearing if the designating body requires information from the applicant in making its decision about whether to designate an Economic Revitalization Area. Otherwise this statement must be submitted to the designating body BEFORE a person installs the new manufacturing equipment and/or research and development equipment, and/or logistical distribution equipment and/or information technology equipment for which the person wishes to claim a deduction. "Projects" planned or committed to after July 1, 1987 and areas designated after July 1, 1987 require a STATEMENT OF BENEFITS. (IC 6-1.1-12.1)
2. Approval of the designating body (City Council, Town Board, County Council, etc.) must be obtained prior to installation of the new manufacturing equipment and/or research and development equipment and/or logistical distribution equipment and/or information technology equipment, BEFORE a deduction may be approved
3. To obtain a deduction, Form 322 ERA/PPME and/or Form 322 ERA/PP Other, must be filed with the county auditor. Form 322 ERA/PPME and/or Form 322 ERA/PP Other must be filed between March 1 and May 15 of the assessment year in which new manufacturing equipment and/or research and development equipment and/or logistical distribution equipment and/or information technology equipment becomes assessable, unless a filing extension has been obtained. A person who obtains a filing extension must file the form between March 1 and the extended due date of that year.
4. Property owners whose Statement of Benefits was approved after June 30, 1991 must submit Form CF-1 annually to show compliance with the Statement of Benefits. (IC 6-1.1-12.1-5.6)
5. The schedules established under IC 6-1.1-12.1-4(d) and IC 6-1.1-12.1-4.5(e) effective July 1, 2000 apply to any statement of benefits filed on or after July 1, 2000. The schedules effective prior to July 1, 2000 shall continue to apply to those statement of benefits filed before July 1. 2000.

SECTION 1 — TAXPAYER INFORMATION

[redacted]

Address of taxpayer (street and number, city, state and ZIP code)

[redacted] FORT WAYNE, IN 46808

[redacted]

Telephone number: (260) 482-4673

SECTION 2 — LOCATION AND DESCRIPTION OF PROPOSED PROJECT

Name of designating body: FORT WAYNE COMMON COUNCIL

[redacted]

[redacted]

County: ALLEN

Taxing district: WASHINGTON TWSP

[redacted]ing equipment and/or research and development equipment and/or logistical distribution equipment and/or information technology equipment (use additional sheets if necessary)

SEE ATTACHMENT

	ESTIMATED Start Date	ESTIMATED Completion Date
Manufacturing Equipment		12-31-05
R & D Equipment		
Logist Dist Equipment *		
IT Equipment *		

SECTION 3 — ESTIMATE OF EMPLOYEES AND SALARIES AS RESULT OF PROPOSED PROJECT

Current number	Salaries	Number retained	Salaries	Number additional	Salaries
54	1,468,150	54	1,468,150	5	115,000

SECTION 4 — ESTIMATED TOTAL COST AND VALUE OF PROPOSED PROJECT

NOTE: Pursuant to IC 6-1.1-12.1-5.1 (d) (2) the COST of the property is confidential.

	Manufacturing Equipment Cost	Manufacturing Equipment Assessed Value	R & D Equipment Cost	R & D Equipment Assessed Value	Logist Dist Equipment * Cost	Logist Dist Equipment * Assessed Value	IT Equipment * Cost	IT Equipment * Assessed Value
Current values	481,437	160,478						
Plus estimated values of proposed project	417,000				100,000		62,000	
Less values of any property being replaced								
Net estimated values upon completion of project	898,437				100,000		62,000	

SECTION 5 — WASTE CONVERTED AND OTHER BENEFITS PROMISED BY THE TAXPAYER

Estimated solid waste converted (*pounds*) ________ Estimated hazardous waste converted (*pounds*) ________

Other benefits:

SECTION 6 — TAXPAYER CERTIFICATION

I hereby certify that the representations in this statement are true.

Signature	Title	Date signed (month, day, year)
[redacted]	Accounting Mgr.	5-24-05

* See [redacted]

CITY F FT WAYNE

MAY 18 2010

COMMUNITY DEVL

COMPLIANCE WITH STATEMENT OF BENEFITS PERSONAL PROPERTY

State Form 51765 (R / 1-06)

Prescribed by the Department of Local Government Finance

FORM CF-1 / PP

INSTRUCTIONS:

1. *Property owners whose Statement of Benefits was approved must file this form with the local Designating Body to show the extent to which there has been compliance with the Statement of Benefits. (IC 6-1.1-12.1-5.6)*
2. *This form must be filed with the Form 103-ERA Schedule of Deduction from Assessed Value between March 1, and May 15, of each year, unless a filing extension under IC 6-1.1-3.7 has been granted. A person who obtains a filing extension must file between March 1, and the extended due date of each year.*
3. *With the approval of the designating body, compliance information for multiple projects may be consolidated on one (1) compliance (CF-1).*

SECTION 1 — TAXPAYER INFORMATION

[redacted]

5/17

948

[redacted]

Telephone number: 260-482-4673

SECTION 2 — LOCATION AND DESCRIPTION OF PROPERTY

Name of designating body: Allen County Common Council

Resolution number: [redacted]

[redacted]

County: Allen

DLGF taxing district number: 02 - 73

Description of new manufacturing equipment, or new research and development equipment, or new information technology equipment, or new logistical distribution equipment to be acquired.

New Equipment and Installation

Estimated starting date *(month, day, year)*: 04/01/2002

Estimated completion date *(month, day, year)*: 12/31/2005

SECTION 3 — EMPLOYEES AND SALARIES

EMPLOYEES AND SALARIES	AS ESTIMATED ON SB-1	ACTUAL
Current number of employees	54	108
Salaries	1,468,150	9,246,379
Number of employees retained	54	108
Salaries	1,468,150	9,246,379
Number of additional employees	5	54
Salaries	115,000	7,778,229

SECTION 4 — COST AND VALUES

	MANUFACTURING EQUIPMENT		R & D EQUIPMENT		LOGIST DIST EQUIPMENT		IT EQUIPMENT	
AS ESTIMATED ON SB-1	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE
Values before project	481,437	160,478						
Plus: Values of proposed project	417,000				100,000		62,000	
Less: Values of any property being replaced								
Net values upon completion of project	898,437	160,478			100,000		62,000	
ACTUAL	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE
Values before project								
Plus: Values of proposed project	0						38,515	11,027
Less: Values of any property being replaced								
Net values upon completion of project	0						38,515	11,027

NOTE: The COST of the property is confidential pursuant to IC 6-1.1-12.1-5.6 (d).

SECTION 5 — WASTE CONVERTED AND OTHER BENEFITS PROMISED BY THE TAXPAYER

WASTE CONVERTED AND OTHER BENEFITS	AS ESTIMATED ON SB-1	ACTUAL
Amount of solid waste converted		
Amount of hazardous waste converted		
Other benefits:		

SECTION 6 — TAXPAYER CERTIFICATION

I hereby certify tha[redacted]e true.

Signature of author[redacted]

Title: CFO

Date signed *(month, day, year)*: 05/16/2010

[redacted]

05/16/2010 16:08:16 7.1.1

Company Name ABATEMENT P

Address of Facility

Application Date

Estimated Total Abatement

	Real Estate Investment	Pers.Prop. Investment	Current Employees	Compl.	Current Payroll	Compl.	Current Avg.Wage	Retained Employees	Compl.	Retained Payroll	Compl.	Created Employees	Compl.	Created Payroll	Compl.	Created Avg.Wage
Proposal 2005		2,150,000	99 (119)		2,942,059		29,718	99		2,942,059		20		355,680		17,784
Report 1 2006		3,413,685	152	Y	3,524,841	Y	23,190	99	Y	2,942,059		53	Y	582,782	Y	10,996
Report 2 2007		3,413,685	246	Y	3,862,217	Y	15,700	99	Y	2,942,059		246	Y	920,158	Y	3,740
Report 3 2008	No Report															
Report 4 2009	No Report															
Report 5 2010		2,254,320	125	Y	4,800,375	Y	38,403	99	Y	2,942,059	Y	26	Y	1,858,316	Y	71,474
Report 6																
Report 7																
Report 8																
Report 9																
Report 10																

Other Local Grants/Incentives

State Grants/Incentives

Estimated Total Subsidy Per Job Per Year

Vote Abstentions

Notes:

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OCT 17, 2011
EX 11

P

STATEMENT OF BENI TS
PERSONAL PROPERTY
State Form 51764 (5-04)
Prescribed by the Department of Local Government Finance

"As Amended"

FORM SB - 1 / PP

CITY OF FT WAYNE

2005 Em

DEPT. OF ECON DEVL.

INSTRUCTIONS:

1. This statement must be submitted to the body designating the economic revitalization area prior to the public hearing if the designating body requires information from the applicant in making its decision about whether to designate an Economic Revitalization Area. Otherwise this statement must be submitted to the designating body BEFORE a person installs the new manufacturing equipment and/or research and development equipment, and/or logistical distribution equipment and/or information technology equipment for which the person wishes to claim a deduction. "Projects" planned or committed to after July 1, 1987, and areas designated after July 1, 1987 require a STATEMENT OF BENEFITS. (IC 6-1.1-12.1)
2. Approval of the designating body (City Council, Town Board, County Council, etc.) must be obtained prior to installation of the new manufacturing equipment and/or research and development equipment and/or logistical distribution equipment and/or information technology equipment BEFORE a deduction may be approved
3. To obtain a deduction, Form 322 ERA/PPME and/or Form 322 ERA/PP Other, must be filed with the county auditor. Form 322 ERA/PPME and/or Form 322 ERA/PP Other must be filed between March 1 and May 15 of the assessment year in which new manufacturing equipment and/or research and development equipment and/or logistical distribution equipment and/or information technology equipment becomes assessable, unless a filing extension has been obtained. A person who obtains a filing extension must file the form between March 1 and the extended due date of that year.
4. Property owners whose Statement of Benefits was approved after June 30, 1991 must submit Form CF-I annually to show compliance with the Statement of Benefits. (IC 6-1.1-12.1-5.6)
5. The schedules established under IC 6-1.1-12.1-4(d) and IC 6-1.1-12.1-4.5(e) effective July 1, 2000 apply to any statement of benefits filed on or after July 1, 2000. The schedules effective prior to July 1, 2000 shall continue to apply to those statement of benefits filed before July 1, 2000.

SECTION 1 — TAXPAYER INFORMATION

Name of taxpayer
[redacted]

Address of taxpayer (street and number, city, state, ZIP code)
[redacted]

[redacted]

Telephone number
(260) 484-3186

SECTION 2 — LOCATION AND DESCRIPTION OF PROPOSED PROJECT

Name of designating body
FORT WAYNE COMMON COUNCIL

Resolution number [redacted]

Location of property
[redacted]

County
ALLEN

Taxing district
PLEASANT

Description of manufacturing equipment and/or research and development equipment and/or logistical distribution equipment and/or information technology equipment (use additional sheets if necessary)

[redacted] WILL ACQUIRE ADDITIONAL EQUIPMENT TO EXPAND OUR [redacted] SEE ATTACHED EQUIPMENT LIST.

	ESTIMATED Start Date	ESTIMATED Completion Date
Manufacturing Equipment	09/30/2002	05/01/2006
R & D Equipment		
Logist Dist Equipment *		
IT Equipment *		

SECTION 3 — ESTIMATE OF EMPLOYEES AND SALARIES AS RESULT OF PROPOSED PROJECT

Current number	Salaries	Number retained	Salaries	Number additional	Salaries
99	2,942,059	99	2,942,059	20	355,680

SECTION 4 — ESTIMATED TOTAL COST AND VALUE OF PROPOSED PROJECT

NOTE: Pursuant to IC 6-1.1-12.1-5.1 (d) (2) the COST of the property is confidential.	Manufacturing Equipment		R & D Equipment		Logist Dist Equipment *		IT Equipment *	
	Cost	Assessed Value	Cost	Assessed Value	Cost	Assessed Value	Cost	Assessed Value
Current values	231,026	177,450						
Plus estimated values of proposed project	2,150,000	1,100,000						
Less values of any property being replaced								
Net estimate values upon completion of project	2,381,026	1,277,450						

SECTION 5 — WASTE CONVERTED AND OTHER BENEFITS PROMISED BY THE TAXPAYER

Estimated solid waste converted (pounds) ____________ Estimated hazardous waste converted (pounds) ____________

Other benefits:
BENEFITS FOR EMPLOYEES INCLUDE:

LIFE INSURANCE, DENTAL INSURANCE, AND MAJOR MEDICAL INSURANCE.

SECTION 6 — TAXPAYER CERTIFICATION

I hereby certify that the representations in this statement are true.

Signature of aut[redacted]	Title	Date signed (month, day, year)
[redacted]	CFO	4/1/05

* See IC 6-1.1[redacted]

COMPLIANCE W[illegible] ST[illegible] [illegible]MENT OF BENEFITS
PERSONAL PROPERTY
State Form 51765 (R / 1-06)
Prescribed by the Department of Local Government Finance

FORM CF-1 / PP

[illegible] 1 5 2006 [illegible]
[illegible] OF ECON DEVL.

INSTRUCTIONS:
1. *Property owners whose Statement of Benefits was approved must file this form with the local Designating Body to show the extent to which there has been compliance with the Statement of Benefits. (IC 6-1.1-12.1-5.6)*
2. *This form must be filed with the Form 103-ERA Schedule of Deduction from Assessed Value between March 1, and May 15, of each year, unless a filing extension under 1C 6-1.1-3.7 has been granted. A person who obtains a filing extension must file between March 1, and the extended due date of each year.*
3. *With the approval of the designating body, compliance information for multiple projects may be consolidated on one (1) compliance (CF-J).*

SECTION 1 — TAXPAYER INFORMATION

[redacted]ty, state and ZIP code)
FORT WAYNE IN 46809

[redacted]
Telephone number: (260) 484-3186

SECTION 2 — LOCATION AND DESCRIPTION OF PROPERTY

Name of designating body: FORT WAYNE COMMON COUNCIL
[redacted]

Location of property [redacted]
FORT WAYNE IN 46809
County: ALLEN
DLGF taxing district number: PLEASANT

Description of new manufacturing equipment, or new research and development equipment, or new information [redacted]ent, or new logistical distribution equipment to be acquired.
[redacted] WILL ACQUIRE ADDITIONAL EQUIPMENT TO EXPAND [redacted]
[redacted] SEE ATTACHED EQUIPMENT LIST.

Estimated starting date (month, day, year): 09/30/2002
Estimated completion date (month, day, year): 03/01/2004

SECTION 3 — EMPLOYEES AND SALARIES

EMPLOYEES AND SALARIES	AS ESTIMATED ON SB-1	ACTUAL
Current number of employees	99	99
Salaries	2,942,059	2,942,059
Number of employees retained	99	152
Salaries	2,942,059	3,524,841
Number of additional employees	20	
Salaries	355,680	

SECTION 4 — COST AND VALUES

	MANUFACTURING EQUIPMENT		R & D EQUIPMENT		LOGIST DIST EQUIPMENT		IT EQUIPMENT	
AS ESTIMATED ON SB-1	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE
Values before project	231,026	177,450						
Plus: Values of proposed project	2,150,000	1,100,000						
Less: Values of any property being replaced								
Net values upon completion of project	2,381,026	1,277,450						
ACTUAL	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE	COST	ASSESSED VALUE
Values before project	231,026	177,450						
Plus: Values of proposed project	2,606,651	1,049,192						
Less: Values of any property being replaced								
Net values upon completion of project	2,837,677	1,226,642						

NOTE: The COST of the property is confidential pursuant to IC 6-1.1-12.1-5.6 (d).

SECTION 5 — WASTE CONVERTED AND OTHER BENEFITS PROMISED BY THE TAXPAYER

WASTE CONVERTED AND OTHER BENEFITS	AS ESTIMATED ON SB-1	ACTUAL
Amount of solid waste converted		
Amount of hazardous waste converted		
Other benefits: BENEFITS FOR EMPLOYEES INCLUDE:		

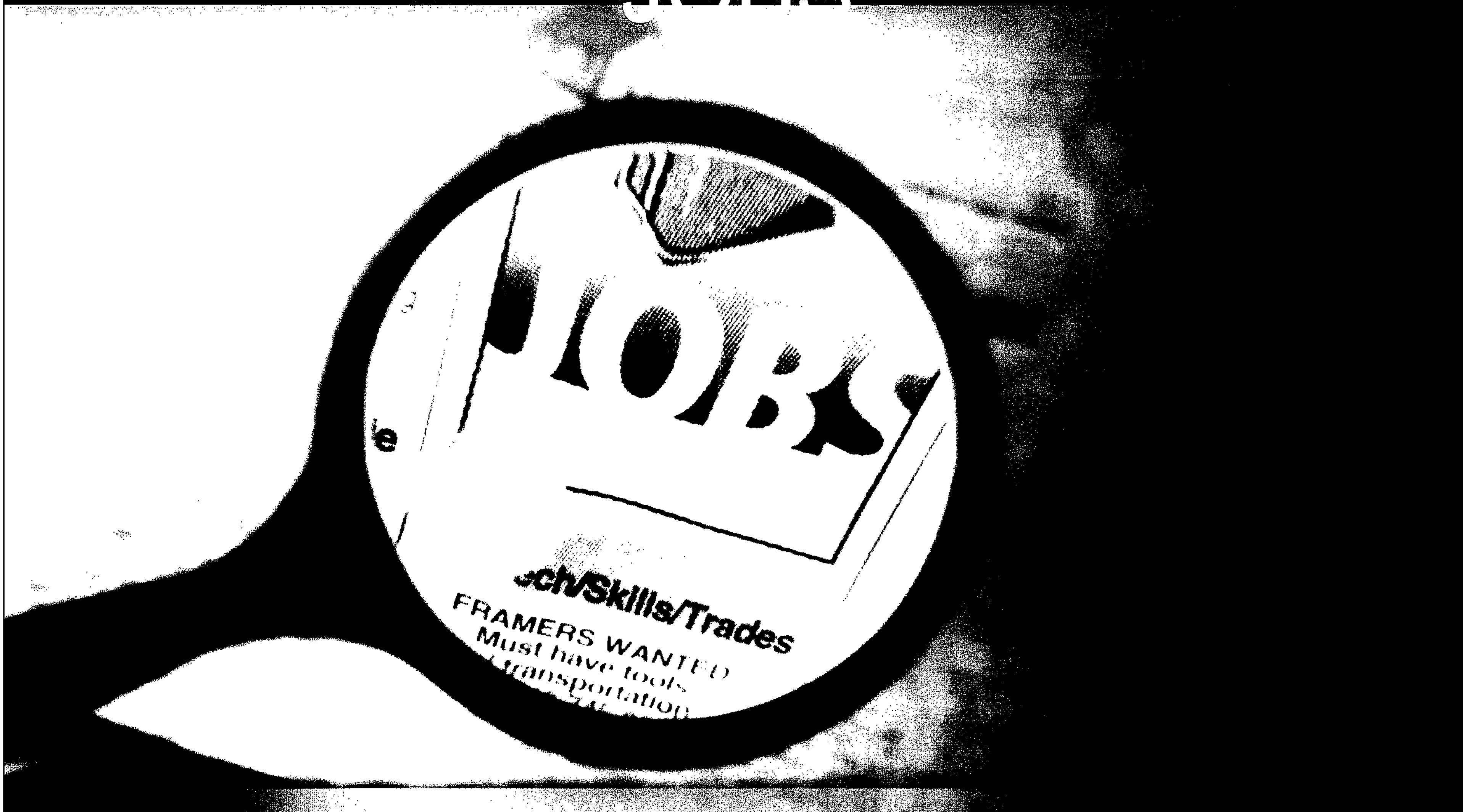
SECTION 6 — TAXPAYER CERTIFICATION

I her[redacted]esentations in this statement are true.

Sign[redacted]entative	Title	Date signed (month, day, year)
[redacted]	CFO	5/15/06

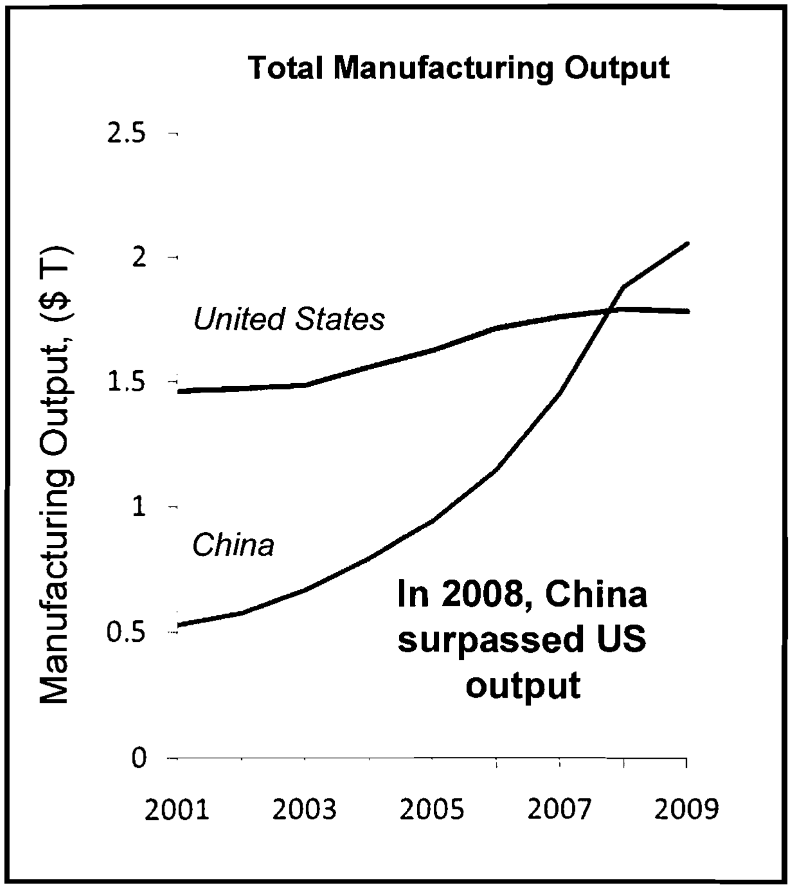
ICED; OCT 17, 2011; EX 12

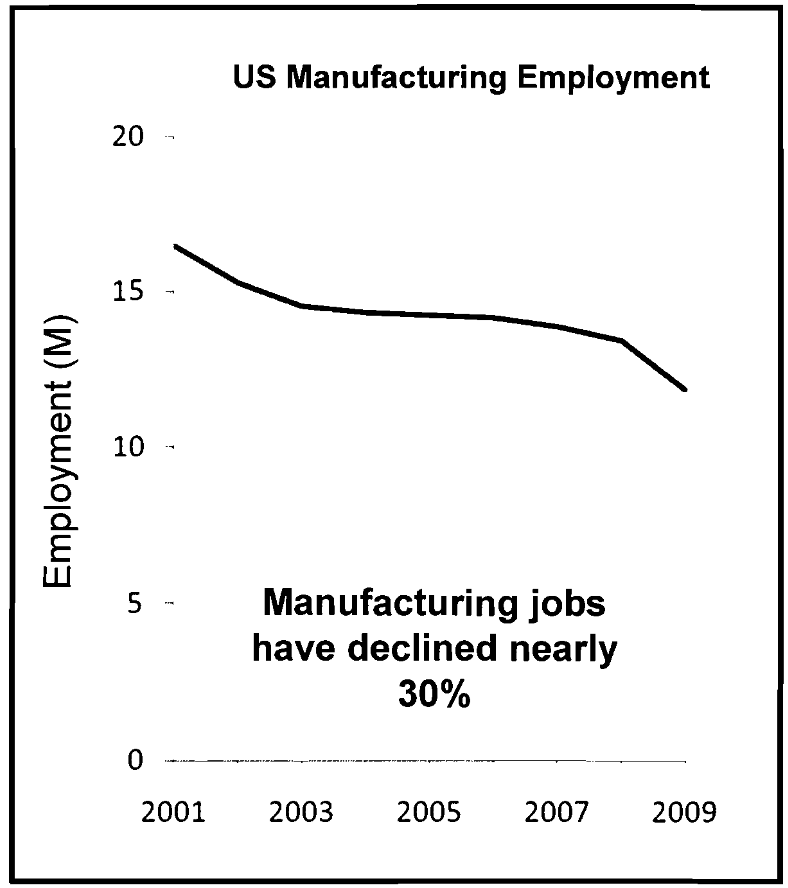
FAIR Competition, IP Protection & JOBS



GREG MCCURDY | … | OCTOBER 17, 2011

U.S. Manufacturing Output/Jobs Moving Overseas

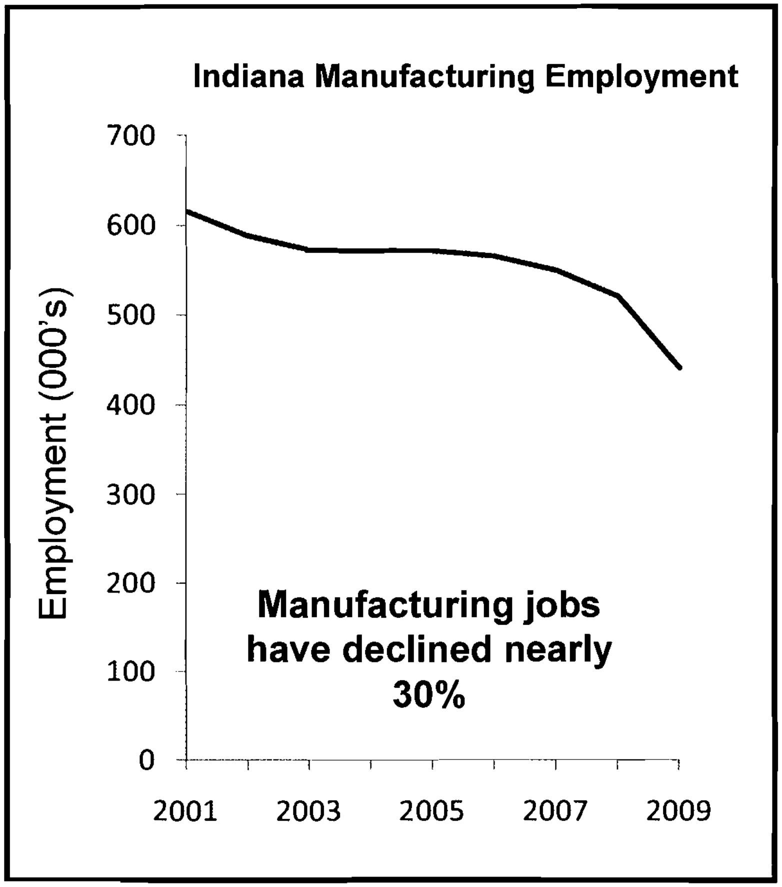




2.4 MILLION US JOBS REPLACED BY CHINESE MANUFACTURING FROM 2001 TO 2008

Source: UN Statistics Division – National Accounts Main Aggregates (ISIC D); Bureau of Labor Statistics; Economic Policy Institute

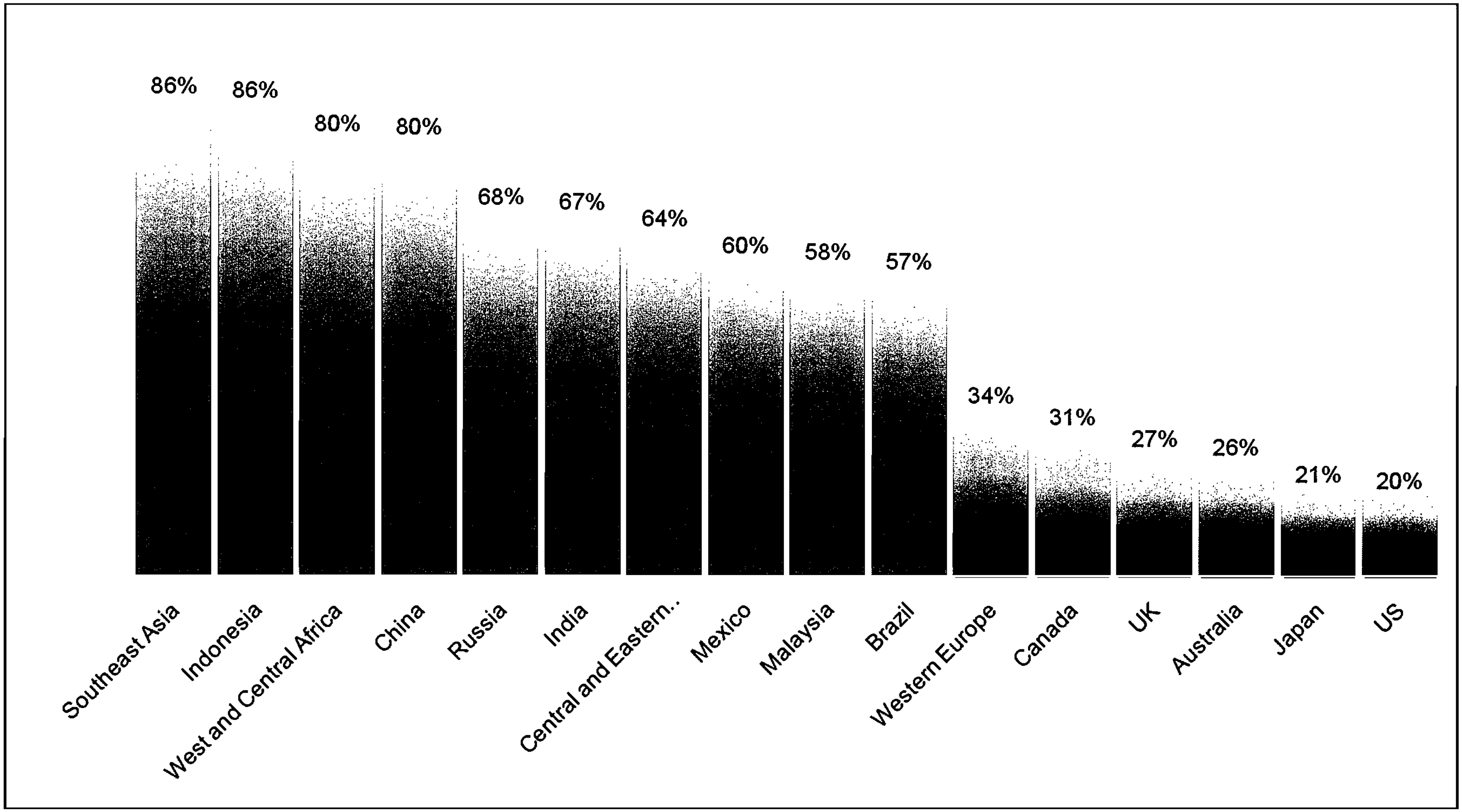
Indiana manufacturing jobs face extreme pressure from China and other foreign countries



- 173,000 Indiana Jobs replaced By Chinese Manufacturing from 2001 To 2009
- 100,000 Indiana jobs have been lost in the last 3 years alone
- Manufacturing represents 17% of Indiana's jobs
- Of all the industry sectors in Indiana, manufacturing experienced the most mass layoff events in 2010

Source: Bureau of Labor Statistics

Software Piracy Rates



Source: 2009 BSA-IDC Piracy Study

Manufacturing Export Sectors & Illegal Software Use

EMERGING MARKET	EXPORTS TO US (EX-OIL) (IN BILLIONS USD)	EXPORT TO US AS % OF LOCAL COUNTRY GDP	EMERGING MARKET SOFTWARE PIRACY RATE
China	$ 366	10%	80%
Mexico	200	22%	60%
India	30	2%	67%
Malaysia	26	16%	59%
Thailand	22	10%	76%
Russia	18	2%	68%
Brazil	17	2%	57%
Indonesia	16	4%	86%
Vietnam	15	17%	85%
Total	$ 710	12%	71%

Indiana IT sector is affected by IT theft

- **IT provides good Indiana jobs at good wages**
  - 54,800 IT jobs in Indiana (2010)
- **Reducing IT theft would create more IT jobs and grow Indiana's economy**
  - 383 new jobs would be created*
  - $694M addition to the state GDP*

** Total IT Jobs Gained in US due to 10% reduction in Piracy (BSA) broken down by state level distribution (Bureau of Labor Statistics)*

Source: Bureau of Labor Statistics,

Indiana-based parts manufacturer must compete with Chinese manufacturer stealing $5.2 Million in software

US Manufacturer

Company: One of the largest commercial vehicle component manufacturers based in Evansville, IN

Products: Vehicle wheels, truck body and chassis parts

Customers: Daimler, Volvo, GM, etc.

# of employees: 2,900

# of PCs: 1,330

Recent Financials

Revenue: $1.0B
X
Op. Margin: 3%

-
Profit: $29.4 M

Software Acquisition Costs (Lifecycle)

Estimated software cost:
$7.8 Million

Chinese Competitor
Ningbo based public auto parts manufacturer

Piracy Rate
99 %

Value of Stolen Software
$ 5.2 M

Sources: OneSource, Hoovers, Keystone analysis

Washington-based paper mill must compete with Chinese manufacturer stealing $13 Million in software

US Manufacturer

Company: Mid-sized paper products manufacturer in Longview, WA founded before the Great Depression

Products: Paper and packaging

Customers: Retail, electronics, food industries

# of employees: 3000

# of PCs: 1500

Recent Financials

Revenue: $1.14 B

X

Op. Margin: 10%

Profit: $114 M

Software Acquisition Costs (Lifecycle)

Estimated software cost:
$8.8 million

Chinese Competitor
Guangdong based paper products manufacturer

Piracy Rate
90 %

Value of Stolen Software
$ 13.0 M

Sources: OneSource, Hoovers, Keystone analysis

California-based apparel manufacturer must compete with Indian manufacturer stealing $14.2 Million in software

US Manufacturer

Company: One of the largest US apparel manufacturers based in Los Angeles, CA

Products: Clothing, shoes & other accessories

Customers: Retail & wholesale (corporations etc.)

# of employees: 11,300

# of PCs: 2,500

Recent Financials

Revenue: $559 M
X
Op. Margin: 4%

-
Profit: $24.4 M

Software Acquisition Costs

Estimated software cost:
$14.6 million

Indian Competitor
Mumbai based textile and garment manufacturer

Piracy Rate
59 %

Value of Stolen Software
$ 14.2 M

Sources: OneSource, Hoovers, Keystone analysis

Use of Stolen IT as an Act of Unfair Competition

- **Statutes in Washington (2011) and Louisiana (2010)**
  - Notice & Cure Letters from IT makers to manufacturers
  - Plaintiffs: Attorney General or harmed manufacturer
  - Defendants: Manufacturers using stolen IT
  - Remedies to level paying field for law abiding manufacturers:
    - Damages = Value of stolen IT X 3 for willfulness
    - Injunctive relief against sale of products
    - In rem jurisdiction over goods if no personal jurisdiction
  - Limited Third Party Liability with safe harbors: Supply Chain Management Practices
  - Incentives for:
    - Manufacturers in high-piracy countries to stop stealing IT
    - US Importers to ask their suppliers to stop stealing IT
  - Results should=Fair competition for manufacturers & IT makers = more US jobs

Microsoft®

ICED
OCT 17, 2011
EX 13

GM

Brian D. O'Connell
Regional Director
State Government Relations

General Motors
124 W. Allegan St.
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Lansing, MI 48933
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General Motors Testimony

Indiana Interim Study Committee on Economic Development October 17, 2011

Committee Co-Chairmen and members of the Committee, thank you for this opportunity to testify. My name is Brian O'Connell and I represent General Motors as the Regional Director for State Government Relations. I am here today to express General Motors' opposition to any support this committee could provide to legislation, including or similar to Senate Bill 529, arising from this study committee.

We support the stated purpose of the idea being pushed by Microsoft to curtail the use of stolen or misappropriated information technology in foreign countries. As a global company with operations in more than 120 countries and over 2,000 suppliers, GM works closely with our federal government, officials at US Embassies and Consulates and American Chambers of Commerce in many countries to address the issue of intellectual property protection. GM fully appreciates what this proposal aims to accomplish, as we must also cope with and manage significant challenges in protecting our intellectual property around the world.

Unfortunately, we believe a proposed solution to this problem pushed by Microsoft in Senate Bill 529 and other states will do little to address the stated problem, yet will likely cause significant new problems for our operations, workers, our dealers, customers and our 330 suppliers with an economic impact of over $1.43 billion annually here in Indiana. The onerous provisions proposed as intellectual property protections in legislation pushed by Microsoft in other states include the award of monetary damages, potential seizure of products, and injunctions barring sale of products in the state – are over-reaching, would invite baseless and burdensome litigation, and could be abused for anti-competitive purposes.

Our primary concern is that passage of such legislation, though well intended, could significantly disrupt our complex supply chain and unfairly impact our operations for reasons outside of General Motors' control. By attempting to control transactions and operations that take place wholly outside of the state of Indiana, this could have grave implications for our U.S. production facilities involving vehicle components that may have actually been produced by as many as two, three, four or several more suppliers working in a "just-in-time" manner.

Please allow me to explain. GM may purchase a part from an American-based "Tier 1" supplier for installation in a vehicle built in one of our manufacturing facilities here in Indiana or the United States. That company, however, may source several subcomponents to several different suppliers, some which manufacture in the U.S. and others with facilities in other parts of the world. For example, a part's housing could be made by one company; the circuit board could be made by another, the wire harness by a third, and the control module made by a fourth. Any one of these vehicle components may be made by companies in other countries and shipped by the different suppliers to the U.S. These components could then be sequenced and shipped to a production facility in one state, to arrive just in time to be assembled on the vehicle as it goes down a GM plant assembly line in another state.

Similar legislation in other states seek to make GM liable for managing the information technology practices of every supplier of every subpart of this global process, even those not based in Indiana, or the U.S. and those which GM may not have a contract with nor have any direct control over. Yet, the legal authority provided by the proposal could be used to bring our domestic production processes to a grinding halt, potentially even be misused for anti-competitive purposes under the guise of intellectual property protection. These kinds of actions could result in severe negative consequences to the automotive industry and the nation's economy as a whole. We believe this proposal could similarly impact many other industry sectors, and we are entirely unclear how these ramifications are justified as an effective remedy to ensure the lawful licensure of software outside of the State of Indiana.

In conclusion, GM also believes there are serious questions regarding the constitutionality of this legislation arising in two areas. First, the legislation could aim to control activity that occurs entirely outside of the state of Indiana – this extraterritorial effect causes concern that the proposal seeks to regulate in an area exclusively reserved for Congress by the commerce clause of the U.S. Constitution. Second, the legislation could aim at controlling interstate transactions that transpire solely outside of the state of Indiana. This burden on interstate commerce also causes concern that the legislation runs afoul of the commerce clause.

That concludes my testimony, and I would encourage you to carefully consider these concerns and oppose this proposal. Thank you again for the opportunity to testify.

October 12, 2011

ICED
OCT 17, 2011
EX 14

Senator Brandt Hershman
Representative Mark Messmer
Co-Chairpersons
Indiana General Assembly Interim Study Committee on Economic Development
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789

Dear Co-Chairpersons Hershman and Messmer:

We would like to express our strong concerns and opposition to so-called piracy legislation circulating in the states that would create a new and unjustified cause of action against many American employers, fueling business uncertainty, disrupting our supply chains and undermining the competitiveness of U.S. firms. We ask that you not pursue this legislation.

This legislation raises significant concerns. American businesses that unwittingly buy from companies alleged to be using unlicensed software could be unfairly penalized. The onerous remedies in the bill – including monetary damages, potential seizure of products, and injunctions barring sale of products in the state – would invite baseless and burdensome litigation that could be used in an anti-competitive manner. At a time when our national focus is getting Americans back to work, the significant supply chain disruptions that could result from this legislation could cost American employees their jobs and halt American exports.

The stated purpose of the legislation is to curb the misappropriation of software in foreign countries. We fully share this goal. Each of our companies has first-hand experience with the problems posed by the theft of our intellectual property and its negative effect on our businesses. Each of us makes strong and ongoing efforts to prevent such intellectual property piracy at all levels. Yet this legislation will do little to address this problem while making things worse for our workers and innovators.

For these reasons, we strongly and respectfully urge you to not pursue this legislation.

cc: Members of the Interim Study Committee on Economic Development

/CED
OCT 17, 2011
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MEMORANDUM

TO:	The Technology CEO Council
FROM:	Theodore W. Kassinger Jonathan Hacker
DATE:	April 1, 2011
SUBJECT:	**Proposed State Legislation Targeting Foreign Misappropriation of Certain Information Technology: Constitutional and International Trade Agreement Issues**

As you requested, we have reviewed legislation proposed in a number of states that would, if enacted, create new state causes of action based on the sale or offering for sale of products made by manufacturers that are alleged to be using certain misappropriated information technology in their business operations. While a statute has not been finally adopted in any state, as currently proposed such legislation plainly would raise serious concerns under the U.S. Constitution and international trade agreements to which the United States is a party.

Executive Summary

Legislation has been proposed in several states that seeks to carve out a state role in the definition and enforcement of certain trade-related intellectual property rights ("IPR") abroad by regulating products imported into those states. The legislation would create a cause of action permitting a narrow category of U.S. IPR holders—principally, those holding copyrights or the equivalent in software—to hold foreign manufacturers and their U.S. customers liable for damages allegedly arising from misappropriation of such IPR. The legislation would further authorize state attorneys general and plaintiffs to procure orders of attachments and injunctive relief barring the sale in the state of products alleged to benefit from the alleged misappropriation. These remedies would be available even though the imported products are neither pirated nor counterfeit, nor otherwise improper for importation into the United States.

In purpose and design, these various legislative proposals appear effectively to apply only to conduct that occurs abroad. Misappropriation of information technology—the only type of IPR covered by the bills—remains a concern within the United States, but the targets of this legislation are manufacturers in China, Asia generally, and South America. Significantly, a complex maze of exclusions, combined with the pre-emptive effect of federal IPR laws, effectively would foreclose the invocation of the laws with regard to alleged misappropriation of information technology by a manufacturer in the United States. As such, only foreign manufacturers and their U.S.-based customers face potential liability. Indeed, the apparent intent of the legislation is to shift to downstream U.S. manufacturers and retailers the burden of policing the use of U.S. information technology worldwide.

Despite laudable goals, such highly discriminatory legislation raises serious concerns under the U.S. Constitution and U.S. obligations under international trade agreements. First, the proposed laws point the states toward regulation of foreign commerce contrary to Article I, section 8 of the U.S. Constitution. The legislation would effectively regulate only proscribed conduct that occurs outside of the country, and the available remedies would amount to a scattershot embargo on the importation of particular products into individual states. Second, the legislation would conflict with the federal government's foreign affairs powers because it would frustrate the ability of the federal government to speak with a single, unified voice in an area of intense and pervasive engagement with U.S. trading partners—the establishment of global standards of IPR protection and domestic enforcement of those rights.

Finally, for much the same reason that they are constitutionally suspect, the proposed state laws may be challenged by U.S. trading partners as violating the obligation of the United States to accord "national treatment" to imported products. This obligation is a fundamental tenet of U.S. multilateral, regional and bilateral trade agreements. A successful challenge under any of them by U.S. trading partners would expose the United States to trade retaliation, while undermining the federal government's continuing efforts to secure greater protection of U.S. IPR abroad.

I. Introduction

Theft of U.S. IPR abroad poses significant challenges for U.S. companies of all sizes and operating across virtually every sector of the economy. The fruits of U.S. innovation, whether manifested in trade secrets, patents, copyrights, trademarks, or simply proprietary business information, is diminished by unauthorized use. Recognizing the substantial costs to U.S. entrepreneurs and the threat to the long-term strength of the U.S. economy, the federal government has sought through domestic legislation and international trade agreements to establish commonly agreed, broadly adopted global rules for protecting IPR, including information technology. Reflecting their critical reliance on technological and business innovations, members of The Technology CEO Council have been private sector leaders in efforts to promote respect for IPR around the world.

National leadership is required to secure a global framework of laws—and as critically, enforcement of those laws—affording adequate protection of U.S. IPR. Indeed, the federal government has continually engaged in robust efforts over the past three decades to negotiate multilateral, regional, and bilateral trade agreements incorporating IPR commitments, and to pursue enforcement of U.S. rights under those agreements.

The plenary responsibilities of the federal government in these endeavors establish a paramount need for the United States to speak with one voice as it pursues the difficult, sometimes controversial mission of persuading foreign governments to enact domestic laws and enforcement practices that will provide increasing levels of protection for U.S. IPR owners.

Recently, however, legislation has been proposed in a number of states that seeks to carve out a state role in the definition and enforcement of certain IPR rights abroad, by regulating products imported into those states. This legislation would create a cause of action permitting a narrow category of U.S. IPR holders—principally, those holding copyrights or the equivalent in software—to sue foreign manufacturers and their U.S. customers for damages allegedly arising from misappropriation of such IPR. The legislation would further authorize state attorneys general and plaintiffs to procure orders of attachment and injunctive relief barring the sale in those states of products alleged to benefit from the alleged misappropriation.

In purpose and design, these various legislative proposals appear effectively to target only conduct that occurs abroad. The resulting highly discriminatory remedy thus raises serious concerns that, despite laudable goals, if enacted the legislation would run afoul of the U.S. Constitution and expose the United States to trade retaliation.

II. The Proposed Legislation

While bills have been proposed in a number of states, legislation has progressed in both houses of the Washington state legislature, and thus will serve as the basis for the following discussion.[1]

The proposed legislation would create a cause of action against any person that manufactures a product "while using misappropriated or stolen information technology in its business operations,"[2] and where such product is sold or offered for sale in the state either individually or as a component of another product.[3] Potential liability is governed by a complex set of conditions, exceptions, and procedural requirements. Importantly, persons who sell the manufacturer's product (either individually or as incorporated as a component in a downstream product) may be subject to third-party liability (again, subject to certain conditions, exceptions, and procedural requirements), regardless whether those sellers were themselves involved in acts of misappropriation or even had knowledge of such misappropriation.[4]

The essential elements of the cause of action and remedies, together with the exceptions, reveal why the legislation is subject to serious question under the U.S. Constitution and trade agreements to which the United States is a party.

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[1] *See* ESSB 5449 (Washington); HB 1495 (Washington). Beyond Washington, information technology misappropriation legislation currently is pending in the following states: Arizona (SB 1529), California (AB 473), Connecticut (HB 6619), Indiana (SB 529), Illinois (SB 1861), Kentucky (HR 113), Massachusetts (HB 2842), New York (AB 3915, SB 3718), Oregon (HB 3315), and Utah (SB 201). Similar bills are reportedly being considered for introduction in Pennsylvania, New Jersey, and Missouri.

[2] "Information technology" is defined to include hardware and software.

[3] IT technology is used in a company's "business operations" if the technology is used in "the manufacture, distribution, marketing, or sale" of an article or product.

[4] Under the Washington bills, if a liable manufacturer does not have attachable assets or does not appear in court, liability may be extended to third parties who sell the manufacturer's product, provided certain notice and other requirements are met. The bills exempt third parties from liability if they take certain steps to prevent the misappropriation of IT, including if they cease to do business with the manufacturer within a prescribed time period.

- "Misappropriation" conduct is not limited to conduct in the state, or even in the United States: "misappropriation" encompasses unauthorized use of IT *anywhere* in the world, and in violation of *any applicable law.*[5] Further, the products sold in the state may be (and likely are) free of any misappropriated IT, and they are not otherwise subject to restraints on importation as, for example, counterfeit or pirated goods. Rather, the targeted conduct involves a manufacturer's *business operations*, not the end product sold in the United States.

- On the other hand, a manufacturer would not be liable where, among other exceptions, the allegation that IT is "stolen or misappropriated" would be based on a claim of (1) patent infringement, (2) misappropriation of a trade secret, or (3) liability under any provision of Title 35 of the United States Code. Thus, for example, a company complaining that an imported product was made through a process that violated the complainant's patent rights might pursue damages and injunctive relieve under existing federal laws, but not as a state unfair competition claim under the proposed legislation.

- The legislation anticipates that monetary damages realistically will not be available. Thus, alternative remedies are provided, all designed to block the importation and sale of products alleged to "benefit" from the upstream misappropriation of IT. These remedies include orders of attachment and injunctive relief, and the potential for recovery of damages from third parties.

The legislation's framework ensures that, for all practical purposes, a claim of theft or misappropriation of IT would be limited to violations of rights that in the United States are already protected under section 106 of the Copyright Act (the rights of exclusive "reproduction, preparation of derivative works, distribution, and display").[6] Because it pre-empts any construction of state law that rests on a claim of rights "equivalent to those protected by the Act," however, the Copyright Act likely precludes any construction of the legislation relating to theft or misappropriation of IT in violation of U.S. law.[7] That is, under the legislation a U.S. software producer could not sue a manufacturer based on alleged unauthorized use of its software in the United States by that manufacturer in its business, because the Copyright Act provides a remedy for such misappropriation. The Copyright Act, however, does not preclude a state from creating a cause of action based on conduct equivalent to a copyright violation that occurs *outside* of the United States; the Copyright Act does not apply extraterritorially.[8]

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[5] Washington bill ESSB 5449, § 7 62d Leg., Reg. Sess. (Wash. 2011). The provision does not require that the "article or product" itself be stolen or misappropriated; it merely requires that the "article or product" be manufactured while the defendant used stolen or misappropriated software/hardware in its business operations relating to that article or product.

[6] 17 U.S.C. § 106.

[7] *See* 17 U.S.C. § 301(a); *Kodadek v. MTV Networks*, 152 F.3d 1209, 1213 (9th Cir. 1998) ("State law cause of action is preempted by the Copyright Act if . . . the rights that a plaintiff asserts under state law [are] 'rights that are equivalent' to those protected by the Copyright Act [and] the work involved . . . fall[s] within the 'subject matter' of the Copyright Act . . . ." (citations omitted)); *see also Jules Jordan Video, Inc. v. 144942 Canada Inc.*, 617 F.3d 1146, 1155 (9th Cir. 2010) (state law claim is equivalent to and preempted by the Copyright Act where "[t]he essence of [plaintiff's] claim is that the [defendants] reproduced and distributed the DVDs without authorization").

[8] *See L.A. News Serv. v. Reuters TV Int'l*, 149 F.3d 987, 990 (9th Cir. 1998).

Moreover, the legislation would preclude any action if the same claim of misappropriation is being or has been litigated in U.S. courts. If there is a pending action in which the defendant is already subject to an injunction or attachment order, then an action under the proposed legislation must be stayed. If there already is a final judgment or settlement, then the action must be dismissed with prejudice. Presumably, if the plaintiff previously litigated and lost the same claims in a different action, then it would face severe hurdles in re-litigating the claims under the proposed legislation.

Other exceptions in the legislation would limit its application to even fewer practical circumstances (though ones highly important to U.S. commerce). Notably, for example, the legislation would exempt manufacturers that use misappropriated IT while selling a "copyrightable end-product" in the state. The effect of this provision is to exclude manufacturers of media such as the CDs and DVDs used to distribute films, music, or software—and third parties who sell their products—from liability even when those manufacturers use misappropriated IT in their business operations.

In short, the only "applicable laws" relevant to claims under the legislation in effect are *foreign laws* prohibiting the theft or misappropriation of IT in the place of manufacture of the offending products. And, the legislation not only is practically confined to conduct that occurs abroad, its remedies are conspicuously formulated to accomplish its goals by disrupting foreign trade.

The legislation anticipates that monetary damages from a defendant manufacturer realistically will not be available, either because jurisdiction cannot be obtained, the manufacturer does not appear in the case, or the manufacturer is judgment-proof. Thus, the legislation alternatively authorizes remedies to block such a manufacturer from doing business with U.S. customers.

Specifically, the legislation would authorize either the state attorney general or a plaintiff to secure orders of attachment and injunctive relief barring a defendant manufacturer from selling or offering to sell products in the state; and where personal jurisdiction cannot be obtained, it would authorize a court to proceed *in rem* against products made by the manufacturer by issuing an order of attachment of the manufacturer's products (at the time the complaint is filed).[9] Further, plaintiffs may seek damages from third-party U.S. customers of the manufacturer – unless those customers either agree to cease doing business with the manufacturer, or to implement and to police detailed policies and procedures designed to remedy the plaintiff's contentions of misappropriation. Particularly in light of the ease with which a plaintiff could proceed directly against a U.S. manufacturer in U.S. courts for alleged misappropriation, rather than in an action under the legislation, the extensive provisions in the legislation setting forth those requirements for third parties have meaning only in the context of a foreign supplier relationship.

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[9] E.S.S.B. 5449, §§ 6,7 62d Leg., Reg. Sess. (Wash. 2011).

III. Constitutional Issues

The proposed legislation raises serious questions under the U.S. Constitution, in at least two respects. First, the legislation arguably represents an impermissible attempt by a state to regulate foreign commerce contrary to Article I, section 8 of the U.S. Constitution, because the state would effectively regulate only proscribed conduct that occurs outside of the country, and because the statute's remedies would target imported products. Second, the legislation arguably conflicts generally with the federal government's foreign affairs powers, because in attempting to regulate a specific type of foreign business conduct, it frustrates the ability of the federal government to speak with a single, unified voice in an area of intense and pervasive federal activity.

A. Extraterritoriality

Article I, section 8 of the U.S. Constitution states that "Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."[10] The first two clauses are known as the Foreign Commerce Clause and the Interstate Commerce Clause, respectively. Both have a "dormant" aspect, precluding states from regulating commerce in areas where Congress has not yet exercised its full powers to do so.[11] Notably, the scope of Congress's power to regulate foreign commerce is greater than its power to regulate interstate commerce.[12]

The validity of a state statute under the Commerce Clause is analyzed through a two-part test (with multiple sub-parts). First, a court will ask whether a statute either (1) directly regulates or discriminates against interstate or foreign commerce, (2) favors in-state economic interests over out-of-state interests, or (3) in practice controls commerce that occurs entirely outside of the state.[13] If the answer is "yes" for any of these inquiries, then the statute is invalid on its face.[14] If the answer is "no," then the court proceeds to step two, applying a balancing test: the statute is valid unless the burden imposed on interstate commerce clearly outweighs the putative local interests.[15]

As explained above in Part II, to the extent that the legislation would create liability for those who misappropriate IT in contravention of U.S. patent or trade secret law, the legislation explicitly exempts those persons from its purview.[16] Given those exemptions, for all practical purposes, a claim of theft or misappropriation of IT would be limited to violations of rights that are already protected under section 106 of the Copyright Act. And because the Copyright Act's

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[10] U.S. Const. art. I, § 8, cl. 3.

[11] *E.g.*, *Piazza's Seafood World, LLC v. Odom*, 448 F.3d 744, 749 (5th Cir. 2006).

[12] *Id.*

[13] *E.g.*, *Int'l Dairy Foods Ass'n v. Boggs*, 622 F.3d 628, 644-45 (6th Cir. 2010).

[14] *Id.*

[15] *Id.* at 644 (citing *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970)).

[16] E.S.S.B. 5449, § 3(2), 62d Leg., Reg. Sess. (Wash. 2011). IPR in the form of trademarks would have no apparent applicability in the context of this legislation.

reach extends to any covered misappropriation conduct within the United States, claims of misappropriation that could be made against a manufacturer's domestic operations would be invalid because a state cannot create a cause of action resting on rights equivalent to those provided under the Copyright Act. It follows that the only types of claims enforceable under the proposed legislation effectively would be claims of misappropriation that fall outside the reach of the U.S. Copyright Act—those based on conduct occurring in *foreign* jurisdictions and violating *foreign* laws.

As such, the legislation's reference to "applicable law" can only mean applicable *foreign law*, and the only conduct that could serve as a predicate for liability would be alleged theft or misappropriation of IT in the jurisdiction where such foreign law applies. This formulation also means that liability would be imposed upon a determination by a state court in the United States that conduct solely occurring abroad violates the law of a foreign jurisdiction, without any such determination by the courts or other authorities of the relevant foreign jurisdiction.

Accordingly, given its extraterritorial design and effects, the proposed legislation arguably would be *per se* invalid pursuant to the Commerce Clause.[17]

B. Conflict with Foreign Affairs Powers

States must yield to the federal government in matters invoking the "concern for uniformity in this country's dealings with foreign nations."[18] This limitation on state power is similar to the dormant Commerce Clause in that, "even absent any affirmative federal activity in the subject area of the state law," any state action "with more than incidental" effect on foreign affairs is preempted."[19]

The legislation necessarily infringes on the President's ability to negotiate with foreign countries regarding their laws and policies with respect to protection of IT. The targets of the legislation clearly are foreign manufacturers; the legislative history demonstrates that of particular concern is the misappropriation of IT in China, Asia more generally, and in Latin America.[20] As described above, the design of the legislation, consistent with its purpose, effectively limits its scope to the conduct of manufacturers abroad and downstream products and business relationships of those manufacturers.

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[17] *See Healy v. The Beer Institute*, 491 U.S. 324 (1989); *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573 (1986). The legislation arguably would not only be facially invalid due to its extraterritorial effect, but also because it discriminates against out-of-state suppliers in favor of in-state suppliers. As discussed above, the legislation as a matter of law would apply differently to foreign suppliers than it would to domestic suppliers. It would impose liability for conduct occurring in a foreign jurisdiction that would violate foreign intellectual property laws, but it would not materially threaten liability for similar conduct occurring domestically that would violate domestic intellectual property laws. Even if there were applicable domestic law, however, the legislation would still discriminate against foreign commerce and likely would be invalid under the Commerce Clause.

[18] *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396 (2003).

[19] *Id.* (citing *Zschernig v. Miller*, 389 U.S. 429 (1968); *see also Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363 (2000) (striking down Massachusetts state law prohibiting state entities from doing business with companies associated with Burma).

[20] *E.g.*, S. Bill Report, E.S.S.B. 5449 (Wash. 2011)

Presidents of both political parties over the course of several decades have actively engaged with foreign governments to negotiate expanded IPR rights and to secure adequate and effective enforcement of those rights by foreign authorities. Senior officials of the Executive Branch are charged specifically with responsibilities for such engagement. At any particular moment, there are scores of IPR matters in which U.S. representatives are engaged with foreign governments. [21] A multitude of multilateral, regional, and bilateral international agreements address the protection of IPR. [22] Such agreements define a balance of rights and obligations reflecting years of negotiations lead by the Executive Branch, as well as Congressional approval.

Most notably, the United States is party to the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"), a multilateral agreement under the auspices of the World Trade Organization.[23] Parties to the TRIPS Agreement are required, among other things, to establish minimum standards of protection for copyrights, and minimum standards for enforcement of those rights through their domestic laws, including through civil and criminal actions.

Parties to the TRIPS Agreement are entitled to complain when another party fails to provide the minimum standards of protection and enforcement required by the agreement, and the United States has done so. For example, in 2007 the United States initiated a WTO dispute settlement proceeding on grounds that in numerous ways, China has failed to meet its TRIPS Agreement obligations with respect to the protection and enforcement of copyrights and trademarks.[24] Eleven other countries and the European Union elected to participate in that proceeding as third parties. In 2009, the disputes settlement panel adopted its final report finding certain Chinese laws and practices inconsistent with the TRIPS Agreement, but rejecting other U.S. complaints. In 2010, China reported that it had enacted legislation to comply with the panel's findings, an outcome the United States did not immediately accept. Meanwhile, protection of IPR has continued to be a primary subject of negotiations between senior officials representing the United States and China.[25]

By its reference to "applicable laws," the proposed legislation apparently seeks to align liability with foreign IPR legal regimes that have been adopted pursuant to the TRIPS Agreement

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[21] For one summary of the multiple agreements and fora in which the United States participates, see http://www.ustr.gov/sites/default/files/uploads/factsheets/2007/asset_upload_file285_13523.pdf

[22] These agreements include, for example, the North American Free Trade Agreement (Chapter 17), the Dominican Republic - Central America - United States Free Trade Agreement (Chapter 15), the United States - Chile Free Trade Agreement (Chapter 17), and many other current and proposed free trade agreements; as well as international agreements associated with the World Intellectual Property Organization, such as the "Paris Convention," the "Rome Convention," the Berne Convention," and the "Treaty on Integrated Circuits."

[23] The text of the TRIPS Agreement and related information may be found at http://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm

[24] http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds362_e.htm

[25] See, for example, http://www.ustr.gov/about-us/press-office/fact-sheets/2010/21st-us-china-joint-commission-commerce-and-trade.

and similar undertakings in other trade agreements. Yet, the enactment of one or more state laws that threaten to penalize foreign manufacturers and their U.S. customers, and to directly impede imports of those manufacturers' products, would plainly and impermissibly burden the President's ability to negotiate agreements and the resolution of disputes aimed at achieving the same goals as the legislation.[26] The TRIPS Agreement dispute with China described above illustrates the complexity of such negotiations, involving multiple countries of varying interests and disagreements even over arbitral outcomes.

To be effective in this arena, the President must retain maximum "flexibility in wielding 'the coercive power of the national economy' as a tool of diplomacy."[27] The proposed legislation would directly impinge on that flexibility. To impose liability, a state court must necessarily interpret and apply foreign law, and it may impose an import remedy even where (1) unlawful misappropriation of IT has not been established in the courts of the foreign jurisdiction, and (2) the foreign jurisdiction disputes an interpretation that its laws apply to or prohibit the conduct in question. Where multiple states undertake to regulate imports on such a basis, the President is concomitantly constrained in the commitments available to offer U.S. trading partners, and is forced instead to bargain over U.S. measures that would not otherwise be on the negotiating table.

In short, the legislation would create a patchwork of state legislation that requires U.S. companies to tailor their international manufacturing and distribution chains to ensure their products are not sold with offending components in some states, and that coerces those U.S. companies into implementing and policing global compliance policies and procedures meeting particular standards on a state-by-state basis. It would compromise the President's flexibility and credibility in international negotiations. The very existence of such laws, with their implied threat of random, supplemental "self-help" enforcement of U.S. rights under trade agreements, would limit the capacity of the Executive Branch to speak for the United States with one voice.[28] The impact of such legislation is certainly more than "incidental," and as such is also constitutionally suspect as contravening the powers reserved to the President and Congress.

III. International Trade Agreements

In addition to its suspect constitutionality, the proposed legislation may be challenged by U.S. trading partners as violating the obligation of the United States not to treat imported products less favorably than domestic products in like situations. A successful challenge would expose the United States to trade retaliation.

[26] That the legislation ostensibly targets foreign private entities is of no consequence with respect to whether or not the legislation impedes on the President's foreign affairs powers. *Garamendi*, 539 U.S. at 416 ("While a sharp line between public and private acts works for many purposes in the domestic law, insisting on the same line in defining the legitimate scope of the Executive's international negotiations would hamstring the President in settling international controversies.").

[27] *Id.* at 424.

[28] *Id.*

A fundamental tenet of U.S. international trade agreements is the obligation to provide "national treatment" to imported products. As stated in Article III of the *General Agreement on Tariffs and Trade* (GATT):

> "The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use."

This national treatment obligation is specifically reinforced in Article 3, section 1 of the TRIPS Agreement, which provides: "Each Member shall accord to other Members treatment no less favourable than it accords to its own nationals with regard to the protection of intellectual property...."

The national treatment obligation is not qualified by a *de minimis* exception and it is not conditioned on a "trade effects test."[29] Even if a given regulation in its application does not currently discriminate against imports, if the regulation poses the risk of treating imported products less favorably than domestic products in the future, then it violates the national treatment obligation.[30]

Where applicable, U.S. national treatment obligations extend to measures taken by individual states or local governments.[31] Indeed, under Article XXIV:12 of the GATT, "[e]ach Member *is fully responsible under GATT 1994 for the observance of all provisions of GATT 1994*, and shall take such reasonable measures as may be available to it to ensure such observance by regional and local governments and authorities within its territory."[32] Further, the "provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding may be invoked in respect of measures affecting its observance taken by regional or local governments or authorities within the territory of a Member."[33]

Although facially neutral, state regulations may still violate national treatment obligations if they accord discriminatorily favorable treatment to domestic products. For example, even where imported and domestic products are treated equivalently under minimum price regulations, a national treatment violation may nevertheless exist if the imported product could

[29] *See Japan - Taxes on Alcoholic Beverages*, AB-1996-2, § H, at 23.

[30] *See Report of the GATT Panel, United States - Section 337 of the Tariff Act of 1930, BISD*, 36th Supp. 345, 387, at para. 5.13 (1989).

[31] *See, e.g., GATT Panel Report, "United States – Measures Affecting Alcohol and Malt Beverages."* (1992) (finding the United States in violation of the GATT for state regulations that discriminated against imports).

[32] Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994, para. 13 (emphasis supplied).

[33] *Id.*, para. 14.

undersell the domestic like product but for the minimum price control.[34] Exposure of imported products to the *risk* of discrimination is itself a form of discrimination prohibited under GATT Article III.[35]

Under Article III, regulations are suspect where, in order to meet particular domestic policy objectives, they act to regulate imports as a means to reform the process or method by which those products are produced or manufactured abroad rather than based on their characteristics. Thus, imported products may be regulated on the basis of non-discriminatory environmental standards, but not solely on the basis of an extraterritorial assertion of domestic policies.[36]

The proposed state legislation thus clearly raises a serious concern that its enactment will prompt a challenge from U.S. trading partners on the basis that it violates U.S. national treatment obligations under the GATT, the TRIPS Agreement, and similar obligations under other trade agreements. Trading partners might challenge the United States on several grounds, including:

> (1) In its substance and remedies, the legislation effectively would apply only to imported products, and it impermissibly would attempt to regulate the process or method by which such products are produced or manufactured abroad. Moreover, such discriminatory treatment is threatened whether or not foreign manufacturers are more likely to use misappropriated IT in their business operations than domestic manufacturers. Stripped to its essentials, the legislation fundamentally would authorize a state court to embargo imports based on the court's own interpretation of foreign law.
>
> (2) The legislation would impose a significant risk of liability on foreign manufacturers but not on domestic manufacturers for the same conduct. As explained above, the "applicable law" most likely to apply to allegations of IT misappropriation in the United States—the federal copyright law—by its operation preempts state law claims based on misappropriation of IT in the United States by a U.S. manufacturer. Foreign products may be barred from importation and sale in a state based on a disagreement among private parties about the nature of a foreign manufacturer's business practices—not in order to enforce a foreign judgment, not because the imported product itself incorporates any misappropriated IT, and not because the imported product is otherwise tainted in

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[34] *See Import, Distribution and Sale of Certain Alcohlic Drinks by Provincial Marketing Agencies*, BISD, 39th Supp. 27, 84-85, para. 5.30 (1992).

[35] *See Report of the GATT Panel, EEC - Payments and Subsidies Paid to Processors and Producers of Oilseeds and Related Animal Feed* Proteins, BISD, 37th Supp. 86, 124-25, para. 141 (1990).

[36] *See Report of the GATT Panel, United States - Restrictions on Import of Tuna, Complaint by Mexico, BISD,* 39th Supp. 155 (1991) (unadopted). To be sure, trading partners are free to negotiate such measures. For example, GATT Article XX provides an exception to GATT obligations for measures regulating imports of products made with prison labor. In the TRIPs agreement, the United States and other countries have agreed to certain specific obligations with respect to IPR, but not exceptions to permit state actions targeting imported products based on alleged violations of foreign law.

any way. Sales of domestic products would not be subject to any such sanction in like circumstances.

(3) The legislation would impose a significant risk of liability on third parties that sell or offer to sell products produced by foreign manufacturers, while posing little or no risk of liability on third parties that sell or offer to sell products produced by domestic manufacturers accused of equivalent conduct.

A determination that the United States is in breach of its national treatment obligations as a consequence of the proposed legislation would open the door to retaliation against U.S. exports if the violation is not eliminated.

IV. Conclusion

The Preamble to the TRIPS Agreement states the Members' purpose, among other things, of "[e]mphasizing the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures." Despite its laudable goals, the proposed legislation runs exactly contrary to this purpose by threatening to impose unilateral sanctions against imports, based on state court determinations that conduct occurring in the territory of a U.S. trading partner violates the laws of that trading partner. Such legislation would be vulnerable to challenge on grounds that it unconstitutionally burdens foreign commerce and intrudes upon the foreign affairs powers of the federal government. Further, the legislation may well place the United States in contravention of its obligations under international trade agreements to treat imported products no less favorably than domestic products sold in like circumstances, thus opening the door to retaliation against exports of U.S. products.